

'CRIME, COMMUNITY AND POLICE IN
CAPE TOWN 1825-1850'

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ABBREVIATIONS

CBB Cape of Good Hope Blue Book and Statistical Register.

CTM Cape Town Mail.

GG Cape of Good Hope Government Gazette.

SACA South African Commercial Advertiser.

ZA Zuid Afrikaan.

ACKNOWLEDGEMENTS

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William Thomas, Barbara Coates and Eliza James undertook the typing of this thesis at incredibly short notice, and have accomplished a wonderful job under very trying circumstances.

ABSTRACT OF M A THESIS

'Crime, Community and Police in Cape Town 1825 - 1850'

Submitted by K D Elks.

This thesis is primarily an examination of petty crime and law enforcement in Cape Town in the period 1825 - 1850. This period was one of fundamental change in terms of the spatial and demographic growth of Cape Town, the diversifying economy and the changing legal status of firstly the Khoi and subsequently the slaves. These developments had significant ramifications on the level and nature of crime, and perceptions of crime and criminals.

The creation of a technically 'free' population and the transition from slave to wage labour engendered a great deal of alarm among Cape Town's dominant classes. That they felt their dominance and hegemony threatened by the potentially challenging White, Khoi and Black under classes, entailed a re-assertion of their power. Control mechanisms instituted in response to this included the abortive Vagrancy Ordinance of 1834, the Masters and Servants' Ordinance of 1841, a revamped police force in 1840 and varying social control stratagems. These were all designed to bolster the power of the dominant classes and mould a pliable labour force inculcated with the morality of the dominant classes.

The under classes proved very adept at side stepping the imposition of control. In this they were often unwittingly aided by the grossly unprofessional and incompetent police. The ascendancy of the dominant classes, however, was temporarily frustrated but never totally checked.

Similar studies of crime and law enforcement in 19th Century Britain have greatly informed the manner in which this thesis was tackled, but the nature of the source material in Cape Town has necessitated a somewhat different approach. The incomplete nature of the Court Record Books meant that a statistical analysis was impossible. More fruitful data were the letter books of personnel and institutions involved in the running of Cape Town; the Superintendent of Police, the Attorney-General, Resident Magistrate and the Municipality. For more general attitudes letters to and editorials in the local press proved to be an invaluable key to an understanding of the mores and perceptions of the dominant classes.

INTRODUCTION

The study of crime and law enforcement is currently receiving "long overdue attention from historians"¹. In direct contrast to traditional histories which examined crime purely in terms of statutes, state trials and legal institutions, the pioneering studies of the 1960's and 1970's have adopted a contextual approach, placing crime firmly within the realms of social history². Originally the new methodology devoted attention to the protest dimension of criminal activity, stressing the role of riots and collective violence as part of the class struggle³. More recently the focus has moved to more petty and frequent manifestations of disorder. This approach also concentrates on local case studies rather than nation-wide analyses, which may ignore important contextual variations⁴. Another important innovative aspect to these recent studies is the question of perceptions of crime and

- 1-----
1 Tobias J J Crime and Police in England 1700-1900
(Dublin 1979) Introduction n.p.
2 Examples of this revisionist historiography include
Hay D, Linebaugh P, Thompson E P (eds) Albion's Fatal
Tree: Crime and Society in Eighteenth Century England
(London 1975). Thompson E P Whigs and Hunters: The Origins
of the Black Act (London 1975). Tobias J J Urban Crime in
Victorian England (New York 1972).
3 e.g. Rude G The Crowd in History: A Study of Popular
Disturbances in France and England 1730-1848 (New York
1964). Quinault R and Stevenson J (eds) Popular Protest
and Public Order 1790-1820 (London 1974).
4 e.g. Philips D Crime and Authority in Victorian
England: The Black Country 1835-60 (London 1977).

popular attitudes to both crime and criminals⁵. This area has received a great deal of attention as the Victorian middle classes in particular and their perceptions tended to dominate contemporary literature.

These revisionist histories of crime in eighteenth and nineteenth century England have greatly informed and conditioned the approach utilized in studying crime in South Africa. Van Heyningen's study, for example, of mid to late nineteenth century prostitution, examines this topic, inter alia in terms of living conditions and the prevailing morality of the Victorian, Colonial middle classes⁶. Social histories of crime, liquor and social control have also been completed on the subjects of early twentieth-century Durban and turn of the century Johannesburg, by La Hausse and Van Onselen, respectively⁷. Each writer also tackles the complex question of the nature of the state and the interaction between the law and the authorities. The law making process has not been focused upon in this thesis, except where the perception of the dominant classes bore on this point, such as in the case of

5 -----
e.g. Thompson Whigs and Hunters and Storch R 'The Policeman as Domestic Missionary: Urban Discipline and Popular Culture in Northern England 1850-1880' Journal of Social History 9(4) 1976 pp481-509.

6 Van Heyningen E B 'Prostitution and Contagious Diseases Acts; The Social Evil in the Cape Colony 1868-1902' in Studies in the History of Cape Town Vol 5 (Cape Town 1984) pp80-124.

7 La Hausse P 'The Struggle for the City, alcohol, the ematsheni and popular culture in Durban 1902-1936' (MA UCT 1984).
Van Onselen C Studies in the social and economic history of the Witwatersrand 1886-1914 Vols 1 and 2 (Johannesburg 1982).

vagrancy. Work is currently being carried out, however, on the nature of the state and the allocation of power in the nineteenth-century Cape Colonial state by Adil Bradlow⁸.

Works referring specifically to crime in Cape Town include those of Hallett, Pinnock and, of a more contemporary nature, Scharf. Hallett, who rejects statistical analyses, presents a series of vignettes drawn from the Criminal Record Books, with which he illustrates aspects of life, particularly of the poor in early twentieth-century Cape Town⁹. Pinnock offers more analysis, but only refers to street gangs in District 6, rather than more general crime in the whole of Cape Town¹⁰. Continuing the theme of street gangs is Scharf who examines their activities in the 1980's¹¹.

This study of petty criminal activity in Cape Town in the period 1825 - 1850 seeks to contribute to this historiography. Cape Town was in a critical stage in its development in this

⁸ Bradlow A Forthcoming M.A Thesis UCT.

⁹ Hallett R 'Policemen, Pimps and Prostitutes and Police Corruption 1902-1904' in Studies in the History of Cape Town Vol 1 (Cape Town 1984) pp1-25 and 'Violence and Social Life in the 1900's' in Studies in the History of Cape Town Vol 3 (Cape Town 1984) pp126-176.

¹⁰ Pinnock D 'From Argie boys to skollie gangsters; the lumpen proletariat challenge of the street corner armies in District 6 1900-1951' in Studies in the History of Cape Town Vol 3 (Cape Town 1984) pp131-174.

¹¹ Scharf W 'Street Gangs, Survival and Political Consciousness in the Eighties' Unpublished paper presented to the Western Cape Conference (UCT 1986). Scharf also develops the themes of liquor and social control in his thesis 'The impact of liquor on the working class (with particular focus on the Western Cape): the implications of the structure of the liquor industry and the role of the state in this regard' (M.Soc.Sci UCT 1985).

period, entailing fundamental social changes, which had important ramifications on the level, nature and contemporary perceptions of crime.

Cape Town in 1825 was the Mother City of the predominantly rural Cape Colony, which had only recently been acquired on a permanent basis by the British, as a result of the Napoleonic Wars. The city was situated on the Colony's Atlantic seaboard at the foot of Table Mountain and was virtually encircled by Lion's Head, Signal Hill and Devil's Peak. The small villages of Rondebosch, Hout Bay, Papendorp (Woodstock) and Observatory were found in the immediate neighbourhood, but have not been included in this study, which focuses on central Cape Town (i.e. as defined by the 1840 municipal boundaries - see map).

Cape Town's economic activities and relationship with both the immediate hinterland and the rest of the Colony were defined by the functions of the city. The mother city thus served as the seat of government, a garrison, a port and a market town for the wine, wheat and wool producers of the Western Cape. The local economy of Cape Town was mostly confined to fishing and craft activities such as smithing¹². This period also saw the beginnings of mercantile expansion. With the ending of the monopolistic control of the VOC in 1795, business started to flourish and was given added impetus by the subsequent arrival

¹² Judges S. 'Poverty, Living Conditions and Social Relations - Aspects of Life in Cape Town in the 1830's' (MA Thesis UCT 1977) pp5-10, Table 2.

of British immigrants, who showed a keen interest in developing the Colony's commercial potential¹³. There was, as yet, very little in the way of manufacturing. The Cape Blue Book of 1840, for example only recorded the existence of a few candle, soap, hat and snuff producers, together with a number of quarries, brickfields and brick ovens. A large proportion of Capetonians found employment as domestic servants and labourers and until 1838 one third were slaves.

Although small by English standards, Cape Town with a population of some 18 600 in 1824 was the only urban centre of any notable size in an otherwise sparsely populated Colony. The city was, however, experiencing demographic growth and in 30 years expanded by roughly 30% so that by 1854 the population had reached 24 000 - a factor which inevitably had an impact on crime and law enforcement (see Tables 1 and 2). Cape Town also increased spatially, predominantly in Districts 12 (Constitution Hill Area), 11 (Roeland St towards Table Mountain), 9 (Caledon Square), 7 (Gardens) and 1 (Somerset Road region) (see map).

This growth, which suffered slight setbacks in 1839 and 1840 with the measles and smallpox epidemics, was explained by both natural reproduction and migration to the city. The immigrants were predominantly British settlers, emancipated slaves from

¹³-----
Bickford Smith V 'Cape Town on the Eve of the Mineral Revolution (c1875): Economic Activity and Social Structure' Unpublished paper presented to the 5th Workshop on the History of Cape Town (UCT 1985) p5.

TABLE MOUNTAIN from TABLE BAY.
A Devils Mountain B Table Mountain C Lion's Head Lions Ramp.

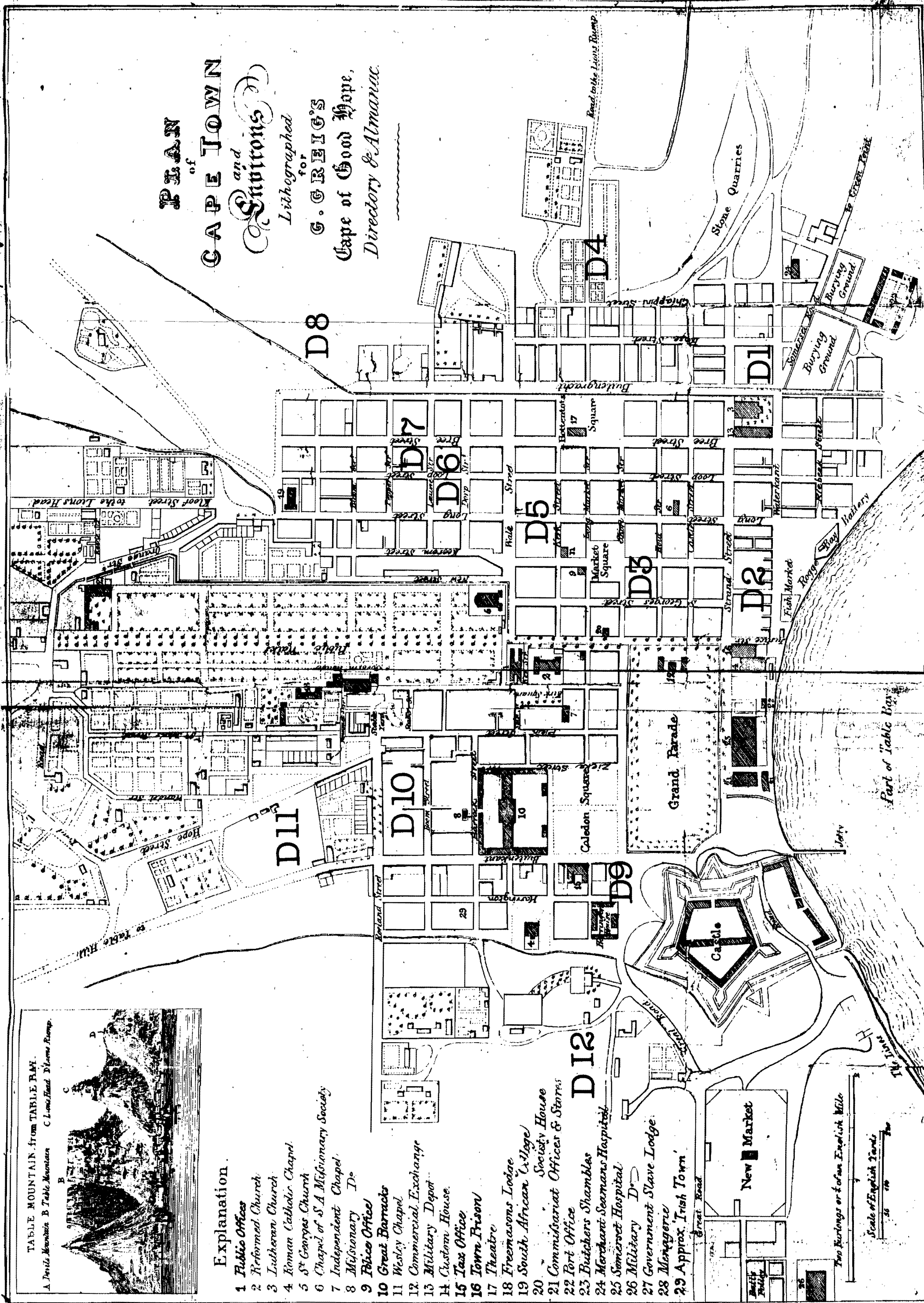


Explanation.

- 1 Public Offices
- 2 Reformed Church
- 3 Lutheran Church
- 4 Roman Catholic Chapel
- 5 St Georges Church
- 6 Chapel of S.A. Missionary Society
- 7 Independent Chapel
- 8 Missionary Do
- 9 Police Office
- 10 Great Barracks
- 11 Wesley Chapel
- 12 Commercial Exchange
- 13 Military Depot
- 14 Custom House
- 15 Tax Office
- 16 Town Prison
- 17 Theatre
- 18 Freemasons Lodge
- 19 South African (Xtlege) Society House
- 20 Commissariat Officers & Stores
- 21 Port Office
- 22 Butchers Shambles
- 24 Merchant Seamen's Hospital
- 25 Somerset Hospital
- 26 Military Do
- 27 Government Slave Lodge
- 28 Mint
- 29 Approx. Irish Town

PLAN
of
CAPE TOWN
and
Surroundings

Lithographed
for
G. GREIG'S
Cape of Good Hope,
Directory & Almanac.



Two Furlongs or 400 feet English Mile
Scale of English Yards
100 200 300

This map is based on Greig's but has been slightly modified to meet the requirements of this thesis

TABLE 1 CAPE TOWN POPULATION 1824 - 1854

YEAR	'WHITE'		'WHITE' AND 'FREE BLACK'		'FREE BLACK'		'COLOURED'		SLAVE		TOTAL
1824	8 806	47%			3 093	17%			6 763	36%	18 662
1827	8 805	48%			3 269	18%			6 222	34%	18 296
1830			13 103	69%					5 838	31%	18 914
1831			13 359	70%					5 827	30%	19 186
1833			13 680	71%					5 562	29%	19 242
1834			13 804	71%					5 607	29%	19 449
1835			13 939	71%					5 574	29%	19 513
1836			14 041	71%					5 702	29%	19 743
1837	10 429	53%					9 336	47%			19 765
1838	10 560	53%					9 456	47%			20 016
1839	10 596	52%					9 660	48%			20 286
1840	10 784	53%					9 397	47%			20 181
1842			No racial distinction made in original								22 543
1849			Municipal census returns								23 749
1854	16 299	68%					7 786	32%			24 337

Figures from Cape Blue Books 1824 - 1854

TABLE 2 DISTRIBUTION OF DEMOGRAPHIC GROWTH IN CAPE TOWN 1842 - 1849

DISTRICT	POPULATION IN 1842	% OF WHOLE POPULATION IN 1842	POPULATION IN 1849	% OF WHOLE POPULATION IN 1849
1	1 102	5,0	1 301	5,5
2	2 557	11,7	2 171	9,1
3	2 313	10,6	2 315	9,7
4	2 566	11,7	2 414	10,2
5	1 889	8,6	1 718	7,2
6	1 661	7,6	1 762	7,4
7	1 734	7,9	1 970	8,3
8	1 775	8,1	1 965	8,3
9	1 222	5,6	1 467	6,2
10	2 278	10,4	1 843	7,8
11	1 304	6,0	1 880	7,9
12	1 439	6,6	2 943	12,4
TOTAL	21 840		23 749	

Based on Municipal returns - 3/CT 1/1/5/36 item 594 1849.

(The 1842 figure is 703 less than the 1842 Cape Blue Book estimate, although both figures were presented by the Municipality. Despite this discrepancy, the statistics still illustrate where Cape Town's growth areas were located.)



"THE HEERENGRACHT c1850"

(Lithograph - H109 Africana Museum Catalogue of Prints, Vol.3 Jbg.1975)
Lithographer unknown.



"DOCK ROAD"

(M460 Reproduced courtesy of Cape Town Archives)
Artist and date unknown.

Cape Town's hinterland¹⁴, a small number of Africans from the Eastern Cape¹⁵ and some "Prize Negroes" - Africans from captured slave vessels and indentured to colonists. Thus the already diverse racial and ethnic composition of the community was further enriched.

White Capetonians who were principally of British, Dutch, French and German origin, made up approximately 50% of the population throughout the 1820's and 1830's. By 1854 the state-aided immigration schemes had increased the number of whites to 70% of the total community. Indigenous Khoi and slaves (from the East, Madagascar and Mozambique¹⁶) accounted for the remaining half of the population, in proportions of one fifth and one third respectively (see Table 1).

In this period, the economy of the Cape Colony was in the process of a substantial transformation. Fundamentally the transition was from a pre-capitalist economy based on slave labour to a mercantile economy with a wage labour force. Cape Town, in particular, was a commercializing city, looking increasingly to a market outside the Colony.

14 -----
Hengherr E 'Emancipation and After: A study of Cape Slavery and Issues arising from it 1830-1843' (MA Thesis UCT 1953) p79.

15 Saunders C 'Africans in Cape Town in the Nineteenth Century: An Outline' in Saunders C (ed) Studies in the History of Cape Town (Cape Town 1980) Vol 2 pp15-23.

16 Armstrong J C 'The Slaves 1652-1795' in Elphick R and Giliomee H (eds) The Shaping of South African Society 1652-1820 (Cape Town 1979) pp76-84.

A response to and symptom of this changing economy was the altered legal status of the blacks and Khoi. In the very short space of only ten years, white colonists, Khoi and slaves were technically placed on an equal legal footing. With the promulgation of Ordinance 50 in 1828, the Khoi no longer had to carry passes and were freed from the rigid labour controls to which they had been previously subjected¹⁷. In 1838, after a four-year period of apprenticeship, slavery also came to an end, thus signalling the emancipation of one half of Cape Town's population. Colour-blind legislation in principle, however, did not necessarily mean impartial law enforcement in practice - one of the issues with which this thesis is concerned.

In Cape Town these structural changes to the economy created what are best termed dominant classes and under classes. The dominant classes, a mixture of merchant capitalists, shopkeepers, landlords¹⁸ and ascendant professionals, earn this appellation owing to their predominant position in terms of personal wealth, prestige, influence and access, albeit uneven, to political and economic power¹⁹. In direct contrast were the under classes, the poor who did not have access to political

¹⁷ -----
 Newton-King S 'The Labour Market of the Cape Colony' in Marks S and Atmore A (eds) Economy and Society in Pre-Industrial South Africa (London 1980) pp171-207.

¹⁸ Warren D 'Property, Profit and Power: The Rise of a Landlord Class in Cape Town in the 1840's' Unpublished paper presented to the 5th Workshop on the History of Cape Town (UCT 1985)

¹⁹ For a detailed analysis of interest groupings in Cape Town in the 1840's see Warren D 'Merchants, Commissioners and Wardmasters: Municipal Politics in Cape Town 1840-1850' (Forthcoming MA Thesis UCT 1986).

power, and were still in the process of being further excluded.

Despite the obvious differences between English and Cape society, Cape Town's dominant classes shared almost identical interests, morality and to a large extent perceptions of society and how it should be ordered as the British middle classes. The question of economic pre-eminence tended to condition similar responses from both groupings, as each grappled with the consequences of a substantially altering socio-economic situation.

An important distinction, however, between the English and Colonial context was the question of race and the changing legal status of firstly the Khoi and subsequently the slaves. This meant that the white colonial dominant classes were even more determined in their struggle to control the potentially threatening under classes. Thus community relations in Cape Town, although predominantly those of class, were given a new dimension with the added ingredient of skin colour.

The cosmopolitan nature of Cape Town's community and its unique set of social relations engendered extreme problems for the dominant classes, desirous of exerting control over the heterogeneous under classes. Both groupings were, however, very resilient and as the dominant classes continually experimented with new control mechanisms and varying strategies to impose discipline, the under classes proved adept at avoiding the

imposition of control and asserting their own identity.

A number of themes have been isolated which illustrate the forces of change operating within Cape Town and their effect on criminal activities and popular attitudes to both crime and criminals. The first chapter briefly outlines the role and standard of Cape Town's police force and examines the questions of police reform and its impact. Since the police, by the manner in which they carried out their duties and made arrests, were in a position to determine the nature and level of criminal behaviour, the calibre of police constables and their professionalism are important considerations.

The following chapter deals with the question of stereotyping of the under classes by the dominant classes and how this invariably led to discrimination by the police. In part, at least, this negative stereotyping was as a result of the fear and concern felt by the dominant classes, regarding Ordinance 50 and slave emancipation. At times of less overt social tension, stereotyping also met the perennial need for a scapegoat. Stereotyping is, of course, not unique to Cape Town, but given the cosmopolitan nature of the society, in a period of tremendous social change, the dynamics of the process and its intensity were necessarily somewhat different from that, for example, in Victorian England (i.e. of the working classes by the middle classes).

A number of specific crimes, more correctly termed misdemeanours in most instances, are then isolated, each of which illustrate particular tensions and concerns within the community. Vagrancy, a deeply divisive issue, was not a legally defined crime, despite attempts to make it so, but was regarded as an affront to the morality of the dominant classes. The attempts to criminalize vagrancy was indicative of the attitudes of the dominant classes, who believed that the law should represent their interests and maintain control over the under classes. Opinions engendered by the vagrancy question were typical of the latent hostility and suspicion evinced by the white dominant classes towards the Khoi and blacks. The clamour for a vagrancy ordinance epitomized the fear that swept the colony in the 1830's with the creation of a "free" population.

Theft, a crime which received universal condemnation, again illustrates the way in which the dominant classes perceived the law and whose interest it should serve. Thieves were not only an injury to the morality of the dominant classes, (in the sense that they were "criminal" and invariably perceived as idle and depraved), but also posed a threat to their property and wealth. Both vagrants and thieves were regarded by the dominant classes as challenging their hegemony and therefore their behaviour provoked a similar response; the law was to represent the interests of the dominant classes and where possible to bolster their power and control over of a potentially damaging alliance of "criminals" from the under classes.

An examination of theft also brings the lives of poorer Capetonians into sharper focus; lives which are otherwise largely inaccessible owing to the nature of the source material, or at best only usually recorded from the obviously biased perspective of the dominant classes.

The final chapter deals with a range of public disorder offences and explores the concept of social control in the Cape Town context. In conjunction with some of the more overt control mechanisms, such as the abortive Vagrancy legislation and the Masters and Servants Ordinance, social control was also designed to ensure that the power of the dominant classes was unchallenged, by moulding the under classes and inculcating the ethics and expectations of the dominant classes. An examination of the constant attempts to impose social control in Cape Town, also illustrates the simmering tensions, fears and naked prejudices within the community, and draws attention to both the common features and dissimilarities between the English and Colonial experiences.

One distinction between England and Cape Town, and one that has naturally determined the manner in which this study of crime was tackled, is the question of source material. The historian of 19th century England is at a great advantage in terms of both the primary source material available, and secondary literature.

One of the most immediate problems in studying crime and law enforcement in Cape Town is the very incomplete nature of the Criminal Record Books. Record Books of the two "inferior" courts (Resident Magistrate's Court and Police Court) are only extant for a small proportion of the period under review²⁰. This difficulty was largely overcome by the discovery of biannual Police Reports dating from 1840, containing fairly detailed information about the levels and nature of crime, and the sex, age and literacy of offenders. Unfortunately this sort of data is not available for the 1830's, the main period of social change which had important ramifications on crime in the community.

A purely statistical analysis of crime is therefore not only impossible, but also not the intention of this study. Historians hotly contest the utility of crime statistics and Tobias, in particular, negates their value altogether²¹. Briefly, the drawbacks are that fluctuations in the crime figures do not necessarily mean that criminal activity is simply either increasing or diminishing. The level of sentencing is determined by a number of other variables including police efficiency, the degree of public co-operation with the legal

²⁰-----
The Record Books of the Cape Town Police Court are only available for the years 1830-1834 and 1844-1846 1/CT 8/1,2,3,4,5,6. (This and all other archival references indicate source material in the Government Archives, Cape Town). The Police Court dealt with the vast majority of offences and therefore the lack of data is a serious drawback. The records of the Resident Magistrate's Court are complete, but this court only dealt with a very small minority of indictable offences.

²¹ Tobias Urban Crime pp14-21.

institutions, public awareness of particular offences, the ease of bringing offences to court and changes to the legal code itself. Statistics also disguise the so-called "dark-figure" of unreported and/or undetected crime²².

A total reliance on contemporary accounts also has its pitfalls, since these cannot be accepted purely at face value, but must be viewed in the context of prevailing morality, aspirations and ethics. Contemporary perceptions, in other words, are likely to be misleading, unless such literature is treated with especial caution. The solution seems to lie in a combination of both sources, paying careful attention to the potential dangers.

A further problem encountered with the official data was that the Police Court, which dealt with the vast majority of offences, was not a court of record. As "criminals" were tried in a summary fashion (i.e. for the speedy administration of justice, without the use of indictments) no records of proceedings were kept. Thus an opportunity for the 'criminals' to speak for themselves through court transcripts and so reveal details about their lives and attitudes is unfortunately lost to the Cape Town historian.

²²-----
For a more detailed discussion of the various merits and drawbacks to using statistics see Gatrell VAC and Hadden TD 'Criminal Statistics and their Interpretation' in Wrigley E A (ed) Nineteenth Century Society: Essay in the use of Quantitative Methods for the Study of Social Data (Cambridge 1972) pp336-396.

Useful sources of information proved to be the letter books and reports of various government personnel involved in the running of Cape Town, particularly the Police Superintendent, Cape Town's Resident Magistrate and the Attorney-General. For more general viewpoints and opinions letters to the local press were indispensable. Almost without exception, these letters were only signed with a pseudonym, but it can be safely assumed that they were penned by observers from the dominant classes. The poor would not have had the opportunity to express themselves in this way, as education and hence literacy was the prerogative of a monied few. The class profile of letter-writers can also be inferred from the tone and content of the letters.

Contemporary descriptions (such as travel accounts and autobiographies) are also useful, not least because they reflect similar sorts of interests and aspirations as the contributors to the local press. The value of these accounts is of even greater significance in the absence of much modern research into early and mid nineteenth-century colonial history, specifically Cape Town. An important exception is Shirley Judges' MA Thesis on Cape Town in the 1830's, in which she examines poverty, living conditions, occupational structure and class relations, all of which relate in some way to the question of crime and law enforcement²³ Much work, however, still remains to be done before the community of Cape Town is fully appreciated at this

²³-----
Judges 'Poverty' passim.

critical stage in the city's development. This study of the nature of the relationship between the dominant and the under classes as shown through criminal activity, attitudes to the law, perceptions of crime and deviant behaviour and the resulting control mechanisms adopted by the dominant classes, only partly fills this gap.

A brief note is necessary to explain some of the terminology employed in the text, namely the terms "Hottentot" and "Malay". Despite the present-day derogatory connotations associated with both terms, when referring to contemporary literature they have been left unaltered, since they are indicative of the prevailing attitudes of the dominant classes and illustrate the concept of stereotyping.

In Cape Town there were extremely few persons of pure Khoi descent. The term "Hottentot" was constantly misused by contemporaries to refer to any "free person of colour" - that is, anyone who was neither perceived as white, nor a slave (or ex-slave after 1838). When not quoting from source material, I have substituted the term 'Khoi' as a convenient shorthand without intending to infer that those persons are of pure Khoi origin.

The term "Malay" was also used imprecisely and incorrectly by contemporaries. What was actually understood by the term was not a racial or ethnic distinction, but a religious one. The

term was used to denote someone of the Islamic faith, and therefore when not quoting from source material I have used the term "Muslim" rather than the misleading "Malay".

CHAPTER I

"KNIGHTS OF THE TRUNCHEON":

THE MAKING OF CAPE TOWN'S POLICE FORCE

An essential prerequisite to an understanding of the nature of crime in Cape Town is to examine the role and proficiency of the police. Unlike the office-bound magistrate, who merely interpreted the law, the police constables operated within the community on a daily basis to enforce the law. The policeman thus served as the critical link between the authorities who framed the legal code and those principally affected by it. In their capacity as law enforcers the police were, to a certain extent, in a position to determine which laws would be enforced, in what manner, and who they would affect. By studying the functions of the police, a rare glimpse is thus afforded of both the lifestyles of "ordinary" Capetonians and how police duties impinged on them. This period of fundamental social upheaval, entailing the "freeing" of the Khoi and blacks, coupled with the growth of Cape Town had significant consequences for the police department. 1825 to 1850 witnessed considerable reform of this institution, as it was continually restructured to meet the demands of changing circumstances.

Despite the many contextual dissimilarities between Britain and the Cape Colony, the great volume of research on the

nineteenth-century British police has greatly informed this study of crime and policing in Cape Town. The current consensus among historians of British history is that the creation of a professional constabulary was a response to the threat posed by the "dangerous classes" of the rapidly expanding urban areas. The dominant classes feared that a crime wave would undermine the very fabric of society which necessitated the reassertion of power to face this challenge¹. Thus in 1829, replacing the antiquated system of parochial nightwatchmen and voluntary associations, the reformed "new police" took to the London streets².

Policing in Cape Town by the 1820's was divided between two distinct authorities. Firstly, under the Burgerraad (Burgher Council) was the Burgerwagt (Burgher Watch), whose task was to patrol the town after dark. Members were drawn from the ranks

- 1 -----
Adherents include:
Jones D Crime, Protest, Community and Police in Nineteenth Century Britain (London 1982)
Philips D "'A New Engine of Power and Authority": The Institutionalisation of Law Enforcement in England 1780-1850' in Gatrell V A C, Lenman B and Parker G (eds) Crime and the Law: The Social History of Crime in Western Europe since 1500 (London 1980) pp155-189
Storch R 'The Plague of the Blue Locusts: Police Reform and Popular Resistance in Northern England 1840-57' International Review of Social History 20 (1975) pp61-90
- 2 For work on the eighteenth-century nightwatch and voluntary associations see:
Rock P 'Law, Order and Power in late 17th and early 18th Century England' in Cohen S and Scull A (eds) Social Control and the State (Oxford 1985) pp191-221
Schubert A 'Private Initiative in Law Enforcement Associations for the Prosecution of Felons 1744-1856' in Bailey V (ed) Police and Punishment in Nineteenth Century Britain (London 1981) pp25-41
For accounts of the "new police" see for example Emsley C Policing and its Context 1750-1870 (London 1983) pp51-75

of adult males and paid £2 monthly from local taxes³. The other arm of the law came under the supervision of the Fiscaal, who until 1825 was both chief of police and public prosecutor in the Court of Justice⁴. This second branch was staffed by caffre constables and police dienaars. The caffres were invariably convicts themselves, banished from the East by the VOC and exiled to the Cape⁵. In 1822 the Colonial Secretary, Bird, described them as:

"The refuse of the Cape population, drunken, worthless and inhuman, frequently selected from the convicts banished to Robben Island; and the best title to be a subordinate in the Department of Justice is to be a

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 3 Botha C G Collected Works (Cape Town 1962) Vol 1 pp162-163
 The situation of the burgerwagt was analagous to the English parochial watchmen, whose services had traditionally been voluntary, but who too were increasingly salaried. Emsley
 4 Policing and its Context p25
 4 In 1827 the office of Fiscaal was completely dispensed with and replaced by an English-styled Attorney- General. Davenport T R H 'The Consolidation of a New Society: The Cape Colony' in Wilson M and Thompson L (eds) A History of South Africa to 1870 (Cape Town 1982) p299. The duties of
 5 Attorney-General were outlined by Ordinance 40 of 1828. Armstrong 'The Slaves' p89 and Ross R Cape of Torments: Slavery and Resistance in South Africa (London 1983) p35. Convicts were also employed as policemen in contemporary Calcutta and Sydney which, after revelations about their corrupt and brutal behaviour, led to demands for police reform. Gurr T Rogues, Rebels and Reformers (London 1976) pp119-121.

notorious villain."⁶

In 1825 reform was instituted in an attempt to establish a more independent and professional police force. With the promulgation of Ordinance 11, the administration of the police was separated from the other tasks of the Fiscaal. A new office of superintendent was created to head the police department⁷. As Governor Somerset, communicated to Bathurst, the Secretary of State, and the preamble to the ordinance explained, the functions of the Fiscaal were not only extensive but often incompatible so that one official could not satisfactorily attend to such duties⁸.

German-born, Baron Charles de Lorentz arrived from Britain in 1826 to fill this newly-created post of Superintendent. His only known credentials were that he had once been a distinguished soldier, and appears to have owed his appointment to the influence of the Duchess of Cambridge⁹. Once

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Bird also reported that the caffres had been armed with swords, but were found to be "swords in the hands of madmen" and following some "outrageous" acts were only allowed staves. Bird W The State of the Cape of Good Hope in 1822 (originally London 1823 - reprinted Cape Town 1966) p19. By the time of the second British occupation, a greater proportion of colonists were utilized so that gradually these caffres were only allocated tasks that white policemen probably found distasteful; punishing and executing slaves, destroying stray dogs, collecting refuse, cleaning the prison and cooking for the inmates. CO 261 13 January 1826 de Lorentz to Colonial Secretary
De Lorentz greatly lamented the loss of these so-called "scavengers" when in 1844 the custom of using convict labour in this manner was discontinued. CO 520 12 December 1843 de Lorentz to Colonial Secretary
7 Ordinance 12 1825
8 G H 23/7 1 November 1825 Somerset to Bathurst
9 Hattersley A F The First South African Detectives (Cape Town 1960) pp29-30

ensconced in the job, however, de Lorentz was not content to be a mere lackey but pursued his career with considerable vigour¹⁰.

Reform at the top of the police hierarchy did not appear to permeate the lower ranks of the department. In 1826 a contributor to the SACA felt that whilst the new superintendent had shown "zeal and energy ... in the execution of his arduous duty", the policemen themselves left a great deal to be desired.

"The dienaars are generally either off their station altogether or lurking in the neighbouring tap houses, drinking and smoking with every variety of character and complexion and thus, rather encouraging than preventing tumult and disorder."¹¹

A year later the Commissioners of Inquiry, sent from London to investigate conditions at the Cape, also drew attention to the dienaars whose job was generally regarded as a "degradation" owing to their frequent drunk and brutal behaviour¹².

De Lorentz himself was not blind to the inadequacies of the policing system and undauntingly pressurized the Colonial Office for further reform¹³. The nightwatch was particularly unprofessional and incompetent, to which de Lorentz made several

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¹⁰ For a different assessment of de Lorentz see Hattersley Detectives pp26-39

¹¹ SACA 5 April 1826 letter to editor

¹² 'Report of the Commissioners of Inquiry to the Right Hon. William Huskisson upon the Police at the Cape of Good Hope' 10 May 1828 in Theal G M Records of the Cape Colony

¹³ (London 1905) Vol 35 p127
e.g. C0 368 1 August 1829, 1/CT 16/24 16 December 1829, 11 October 1838, 6 February 1839 de Lorentz to Colonial Secretary

ad hoc changes in the early 1830's, but no substantial improvements were discernable¹⁴. Public dissatisfaction with the police was also growing, especially after a spate of burglaries in the early 1830's for which the police were held responsible¹⁵.

A final consideration prompting reform of the police and the nightwatch was the broader social context within which this restructuring eventually occurred. In December 1838, after a four year period of apprenticeship, slavery came to an end. This meant that approximately one third of Cape Town's population now had more choice in where to live and work and were no longer under the jurisdiction and personal control of slave owners. Surveillance by the police was, therefore, deemed essential and served to further extend and preserve the power of the state. In 1840 Cape Town's system of policing was completely overhauled¹⁶. The desire of British Colonial officials to emulate English institutions meant that the Metropolitan Police Reform of 1829 served as a useful and convenient blueprint¹⁷.

14 -----
For example in 1830 the number of watchmen was reduced from 40 to 26. The saving was used for higher salaries and a small mounted patrol of 7. 1/CT 16/24 23 December 1830 de Lorentz to Colonial Secretary

15 e.g. ZA 24 October 1834 letter to editor
SACA 1 June 1833 letter to editor

16 Ordinance 2 1840

17 For a broader discussion of the policy of "Anglicanisation" see J Sturgis 'Anglicisation at the Cape of Good Hope in the Early Nineteenth Century' in Journal of Imperial and Commonwealth History 11 (1982-83) pp5-32

Police reform in Cape Town resulted in the abolition of the nightwatch whose duties were henceforth performed solely by the police. A new post of police inspector was created, to be filled by a Mr King from London. De Lorentz appears to have placed considerable emphasis on this appointment, probably in the hope that an infusion of blood and ideas from the metropolis would ensure a new and greatly improved lease of life for the ailing Cape Town police¹⁸.

The sense of local pride engendered by the "new police" which replaced the "antiquated, great-coated guardians of the night" was evident in this statement in the 1841 Almanac:

"...this is decidedly a great improvement especially as the present force consists of an orderly, respectable, well-behaved set of men and they appear likely to remain so as long as they continue under the able superintendence of¹⁹ the present superintendent and inspector of police".

Until 1840 the number of policemen had varied quite considerably. In 1825 the total force had consisted of only 28, but in an attempt to attract men of better quality their numbers were reduced to 20 and the eight saved salaries redistributed among the remaining constables²⁰. Until 1840, owing to the difficulty of finding recruits, the number of employees rarely

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1/CT 16/24 4 February 1840 de Lorentz to Colonial Secretary

¹⁹ From 1841 Almanac reprinted in SACA 16 January 1841

²⁰ The Commissioners of Inquiry recommended that the strength of the force be reduced to a mere 15, but this was not acted upon. Theal Records Vol 35 pp133-134

rose above 20 and at some stages was as low as 13²¹. The ratio of police to policed in Cape Town prior to 1840 thus fluctuated between 1:1000 and 1:1500. After 1840, when the force comprised 1 inspector, 4 sub-inspectors, 4 sergeants, 34 constables and 3 mounted patrolmen, the ratio vastly improved to 1:440. This did not compare unfavourably with contemporary London where the ratio was roughly 1:400²².

Filling these positions in the police department appears to have been problematic. There was a fairly continuous turnover of policemen, which meant that it was no simple task to organise and train a reliable group of men who were suitably familiar with their duties and professional in approach²³. There were a few long-serving policemen but, for the most part, men were recruited and dismissed at what, to de Lorentz, must have seemed a rather alarming rate²⁴. In one month alone in 1826, 9 men were discharged, one of whom was only employed for 5 days²⁵.

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Seen from Police Duty Books
POC 16 1826 May - 1827 June
POC 17 1829 January - June
POC 18 1837 March - 1838 March

Unfortunately these records are not available for the period after 1840, and it is therefore impossible to ascertain how regularly police constables were employed and dismissed after the 1840 reform.

²² The population of London was an estimated 1 800 000 and the combined number of police 4 500. In Sydney in 1844 the ratio was 1:421 and Calcutta 1:135. The latter had a far better ratio than most cities, but the policemen were corrupt, brutal and grossly inefficient. Gurr Rogues pp119-121,125. Ratios in English mid-centur% police forces ranged from 1:422 in Liverpool to 1:2494 in Oldham. Gatrell and Hadden

²³ 'Criminal Statistics and their Interpretation' p358.
A similar situation existed in London where there was a very high turnover of men who either left for a better job or were dismissed for irregularities. Radcinowicz L A History of English Criminal Law (London 1968) Vol 4 pp166-170.

²⁴ POC 16, 17, 18

²⁵ CO 261 3 July 1826 de Lorentz to Colonial Secretary.

Even after the revamping of the force in 1840 the situation barely improved. In the six years after 1840 a total of 340 men served in the police force, 5 of whom died, 122 resigned and 168 (approximately 50%) were dismissed²⁶. The yearly turnover of 50 was fairly considerable, a problem which still plagued Inspector King in 1856²⁷. Some policemen left voluntarily, while others were dismissed for "excesses of duty" or, more commonly, frequent drunkenness²⁸.

In 1840 de Lorentz attributed the difficulty of finding suitable recruits to:

"..the peculiar dislike, not to say detestation, in which the service is held by the inhabitants, a feeling operating very prejudicially against the Department, and one which will only be removed by the degree of estimation to which the police raises itself."²⁹

The question of the availability of applicants and their degree of readiness to pursue this avenue of employment was directly linked to the earning potential of policemen. A brief glance at the letters to the Colonial Office reveals that in this period nearly all government employees were dissatisfied with their pay. The police were no exception as de Lorentz' frequent letters on this subject illustrate³⁰. In 1829 the

26 -----
26 3/CT 1/1/5/26 16 September 1847 Report of Inspector King
27 "Report of a Select Committee appointed by the House of
Assembly to inquire into and report upon the state of the
Police Department of this city" (Cape Town 1856)
28 CCP 1/2/2/1/3 evidence of Inspector King
28 Seen from Guard Books POC 16, 17, 18
29 CO 493 17 December 1840 de Lorentz to Colonial Secretary
30 e.g. CO 261 21 February 1826, 1/CT 16/24 11 March 1829
de Lorentz to Colonial Secretary

pay of the ordinary constable was £45 pa, while the officers generally received £52 pa³¹. This averaged at £3 15s and £4 pm respectively. Although the salaries of the Cape Town constables did not compare unfavourably (only 8 shillings less) with their London counterparts³², they received a fairly poor wage relative to other professions in Cape Town. Policemen were, however, also provided with board and lodging³³. Skilled workers, according to Judges, could earn as much as £8 per month while unskilled labourers and servants as little as £1 16s³⁴. It seems highly improbable that a skilled artisan would contemplate a drop in salary to become a policeman, except perhaps in times of economic hardship and high unemployment. The recruits were far more likely to be semi- or unskilled workers who wished to improve their earning potential and possibly even their social status³⁵.

Although the Colonial Office was extremely reluctant to grant pay increases, salaries did slowly improve. By 1846 the

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³¹ CBB 1829. The rural constabularies were paid substantially less, which prompted the Resident Magistrate of Malmesbury to complain in 1844 that he was obliged to allow the constables a secondary occupation to supplement their meagre earnings. At the time of this complaint salaries in Cape Town had risen to £52 pa whilst rural policemen were paid only £31 10s

³² Emsley Policing and its Context p63

³³ In 1828 de Lorentz suggested that the sum of 20s per month should be given as compensation to married policemen who did not live in the police barracks. If this 20s were included as a part of their salary, this would clearly improve their earning potential considerably by an additional £12 pa.

³⁴ CO 342 22 February 1828 de Lorentz to Colonial Secretary

³⁴ Judges 'Poverty' Table 2

³⁵ According to Philips, most policemen in the Black Country were originally labourers.

Philips Crime and Authority p71.

officers' pay had been raised by some 50% to £75-£80 pa. Wages for the constables did not increase proportionally. An increase of only 15% brought their salaries to £52 and there was a required minimum of 2 years service before there was any possibility of further advancement³⁶. Few constables were likely to remain this long.

The 40 (later 20) nightwatchmen were not in as secure a financial position as persons in other occupations or even the police. A poverty datum line for Cape Town in the 1830's has been estimated at £3 8s 10d pm for a family of five³⁷. A nightwatchman could expect to earn only £2 7s 8d pm; substantially less than this minimum subsistence level³⁸. Watchmen also lived in private accommodation which placed them at an even greater financial disadvantage compared with the police. To supplement these meagre earnings many were forced to pursue secondary occupations, which according to Judges was also a well-established practice in other jobs³⁹.

Policemen were readily identifiable by two distinctive features that in theory set them apart from the community in which they worked - their clothing and their accommodation (see

³⁶-----
CBB 1846 Ordinance 2 of 1840 stipulated a minimum of 2 years' employment before promotion.

³⁷ Judges 'Poverty' p5

³⁸ Judges 'Poverty' Table 2

³⁹ Judges 'Poverty' p20 In a scathing attack on the nightwatch, a contributor to the ZA criticized the custom of their holding two jobs. He described the watchmen as "emaciated men" who were thus totally unable to cope with the recent burglaries. ZA 17 October 1834 letter to editor



"POLICE CONSTABLE IN
FULL UNIFORM "

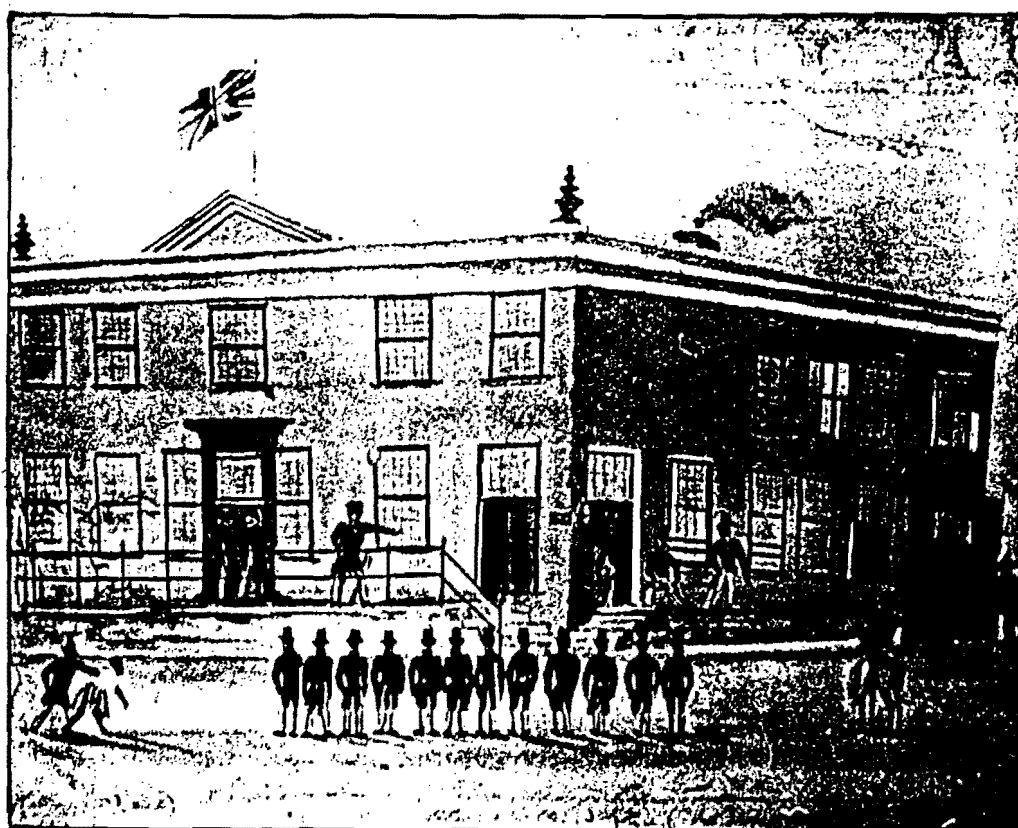
This picture illustrates
the uniform worn by Swellendam
police which was likely to
have been similar to that
worn in Cape Town.

(C0536 2 December 1844
Civil Commissioner,
Swellendam Colonial
Secretary)



"PRISON AND CUSTOM HOUSE"

(M468 Reproduced courtesy of Cape Town Archives)



"POLICE STATION IN GREENMARKET SQUARE"

(AG5775 Elliot Collection - Reproduced courtesy of Cape Town Archives)

illustrations). In 1826 the police were recognizable by their red waistcoats and staffs⁴⁰. After 1840, symbolic in itself of their raised status, the image of the police was improved by the provision of a full uniform⁴¹. The civil commissioner of Swellendam believed that a uniformed policeman commanded more respect from the public, and also gave the policeman more self-esteem⁴².

The police were housed separately at either the prison or the police station⁴³. All but the officers and married men were expected to live in these provided quarters⁴⁴. This arrangement meant that the majority were always immediately at hand in the event of an emergency and also facilitated discipline over the sometimes rowdy constables, since their recreational habits in particular could then be supervised. Absenteeism, predominantly as a result of drunkenness, however, continued to present difficulties⁴⁵. A potential drawback to this separation of police and policed was that it could contribute to the notion that the policemen were outsiders and as such not serving the interests of the community.

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41 ZA 25 February 1831 letter to editor

42 CO 512 16 September 1842 de Lorentz to Colonial Secretary

43 CO 536 2 December 1844 Civil Commissioner of Swellendam to Colonial Secretary

44 The first police station was the Town House in Greenmarket Square until 1840 when a second was located at the corner of Burg and Church Streets.

45 CO 342 22 February 1828 de Lorentz to Colonial Secretary

Another problem was venereal disease. In 1838 de Lorentz ordered that any policeman absenting himself from work without a note from the doctor would have his pay stopped. POC 18 19 February 1850. Order from de Lorentz.

A degree of popular hostility to the police, similar to that identified in nineteenth century Britain, certainly appears to have existed in Cape Town⁴⁶. In the early 1830's the incidence of attacks on policemen averaged 14 cases per year⁴⁷. After 1840 the incidence of assaults on policemen and/or the use of threatening and abusive language had nearly tripled⁴⁸. These figures suggest that the revamped police force was more efficient in the execution of its duties, and thereby provoked greater hostility from a public who regarded this "efficiency" as mere interference.

These antagonisms were perhaps aggravated by the fact that policemen tended to be outsiders or relative newcomers to the community. In the 1820's reference was made to policemen of German extraction and to the dienaars who were English and

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Based on his research into the introduction of a rural police in Northern England, Storch argues that the constables were regarded as intruders, personifying alien values, which led to friction between the police and community. This manifested itself in attacks on the police, rescuing prisoners from custody and even anti-police riots. As well as regarding the police as a ruling class tool, another source of resentment was the fact that the police were often seen as parasites because they did not participate in manual labour. They merely walked the streets or sat in an office, at the rate-payers' expense. Storch 'Plague of Blue Locusts' pp71-74.

47 For 1830 and 1831 there were 28 cases, of which 9 were either dismissed or withdrawn. One policeman, Lisamore, seemed to draw particular attention and was attacked 6 times in the space of 10 months.

Figures from Court Record Books 1/CT 8/1, 8/8.

48 From June 1844 to May 1845 there were 40 such cases, of which the far smaller number of only 5 were discharged. 1/CT 8/4, 8/5 Court Record Books 1844-1845

foreign soldiers who bought their discharge at the Cape⁴⁹. Unlike the nightwatch, the police force was exclusively white and predominantly British⁵⁰. It was perhaps felt, especially in these early formative years, that British policemen would show greater loyalty to what was really a British institution.

The tasks assigned to the police were surprisingly varied, many of which would not be associated with a modern constabulary. The most essential duty was to patrol the streets, since a vigilant force could then pre-empt any criminal behaviour, or at least be available to make arrests.

In the 1820's and 1830's relatively few men were utilized to patrol the streets - sometimes as few as one third of the total

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Theal Records Vol 35 p128. De Lorentz, of course, was German and an ex-soldier. This was also the situation in London where one of the first commissioners was a war veteran and a large number of the first recruits were ex-servicemen. Critchley T A A History of Police in England and Wales 900-1966 (London 1967) pp51-52

50 Obviously this did not include the convict "scavengers" who were not white. This profile on the police was carried out by an analysis of surnames in the Police Duty Books and De Lima's 1848 Almanac pp64-65. Judges has ascertained from street directories that some watchmen were "coloured". Judges 'Poverty' p7. An article in the SACA reporting an assault of a "black" patrolman corroborates this. SACA 1 February 1837. In the rural constabularies, however, "black" policemen were employed. CO 536 4 December 1844 Resident Magistrate to Colonial Secretary.

constabulary⁵¹. Other duties included appearances in court, clerical tasks and assignments out of town⁵². Patrols appear to have been within a fairly restricted area, concentrated in the centre of town and the waterfront, where the shops, businesses and warehouses were located⁵³. According to de Lorentz this was still the state of affairs in the 1840's⁵⁴, the rationale for which was clearly stated by one of his sub-inspectors. "The policemen are distributed according to property; where there is most property the policemen are thicker"⁵⁵.

Even in the 1830's there had been complaints about the system of patrolling, but in the 1840's the defects were more glaringly obvious. Cape Town was in a period of growth both spatially and demographically. This expansion tended to occur towards the outskirts of town, particularly District 12 (Constitution Hill Area). (See Tables 1 and 2). De Lorentz himself was prepared to concede that more men were employed in the town centre, which was to the detriment of the growing

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 51 Little information has been discovered regarding the patterns of patrolling and therefore any conclusions will be necessarily tentative. Police Duty Books, outlining the patrol areas, are only extant for the years 1826-27, 1829 and 1837-38. Unfortunately similar records are not available for the period after the 1840 reform.

52 In 1842 Inspector King reported that the assistance of the Cape Town police had been required in Altona, Papendorp (Woodstock) and the Cape Flats. CO 512 18 January 1842
 Report of Inspector King

53 Marshall M 'The Growth and Development of Cape Town' (MA Thesis UCT 1940) pp54, 65-66

54 CO 562 22 August 1846 de Lorentz to Colonial Secretary

55 CTM 12 June 1847

periphery⁵⁶. With the arrival of British merchants, property of value, which was increasing, was clearly regarded as more deserving of police attention. .

Cape Town's numerous squares were also the objects of regular surveillance. These open spaces were focal points for a diversity of activities, ranging from the inoffensively practical, such as the use of the water pumps or hiring of "coolies", to the more colourful when the squares served as venues for soliciting prostitutes, places of "carnal connection" (a euphemism for sexual intercourse) a gathering point for vagrants and somewhere for inebriates to collapse for the night⁵⁷. Offences committed in the obscurity of narrow lanes were obviously far more difficult to observe, especially as Cape Town had no system of street lighting until 1846⁵⁸.

On Sundays policemen were also sent to the major denominational churches (St George's, Lutheran etc.). This ensured that the wealthier and respectable Capetonians were not plagued by beggars or "Swarms of filthy, ragged, disgusting

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56 CO 562 22 August 1846 de Lorentz to Colonial Secretary
57 Seen from Court Record Books and Indictments
58 Gas street lights were provided by the Municipality but even these were extinguished at 12 o'clock. Hattersley
Detectives p49

children" as they filed in and out of church⁵⁹.

Conversely there were parts of Cape Town that never saw a policeman. This was partly explained by the concentration of constables in the town centre, but also because the "unreformed" police force of the 1830's was too small to cover the entire 2 square miles of Cape Town. Even after 1840 the "reformed" police could not satisfactorily cope with the pressures of a substantially growing urban area. Moreover police presence was perhaps superfluous in quiet areas where criminal behaviour was relatively unknown. On the other hand, the lone patrolman, who was rather vulnerable to attack, may well have preferred to turn a blind eye to the activities of the rougher parts of Cape Town.

Residents who felt the lack of a policeman readily complained to the local press or authorities. Letters were sent for example by the Wardmaster of Ward 4 (Somerset Rd Region)⁶⁰ and an inhabitant of Constitution Hill⁶¹ lamenting the absence of constables in their respective areas. Complaints were also lodged by Green Point residents, desirous of police protection. De Lorentz explained that, unless some financial contribution

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SACA 11 December 1841 letter to editor. The need for "quiet and calm" is further demonstrated by a complaint from a Simon's Town resident who was indignant at "the bustle and uproar equal to that of a public market day" encountered while on the way to worship. SACA 22 June 1833 letter to editor. Similar duties were expected of the London police for precisely the same reasons. Emsley Policing and its Context p66.

⁶⁰ 3/CT 1/1/5/1 14 October 1840, 5 November 1840

⁶¹ 3/CT 1/1/5/2 6 April 1841 Wardmaster to Municipality

SACA 9 January 1839 letter to editor

were made, this request was out of the question especially as it would have entailed a walk of some 4 miles⁶². All three complainants were located on the outskirts of town, which de Lorentz admitted were neglected at the expense of the centre.

The fact that an area was patrolled did not, however, necessarily mean that crimes would be detected and that it was a trouble free neighbourhood. At times law enforcement appears to have been fairly lax, either because the police recognised that they were powerless to act, or because the police themselves were corrupt. A letter sent to the municipality in 1841 complaining of a particularly rowdy canteen illustrates the sometimes haphazard behaviour of the police since, if the neighbours could hear the bedlam, then the police too must most certainly have been able to. The public house The Anchor situated in Waterkant Street was shielded against public scrutiny by a wall:

"...within this wall is hidden the objects of complaints, namely drunken customers, there using unbecoming language and exposing themselves to the greater annoyance of the neighbours without being perceived by the passing policemen."⁶³

A further letter written some 7 months later shows that no action had been taken in the interim to alleviate the situation⁶⁴.

In a substantially expanding urban area, the police could

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1/CT 16/24 24 October 1834 de Lorentz to Colonial Secretary

⁶³ 3/CT 1/1/5/1 15 December 1840 letter to Municipality

⁶⁴ 3/CT 3/1/1/1 12 July 1841 Municipality to de Lorentz

clearly hardly be omnipresent. To secure convictions, therefore the co-operation of the public was essential. This was particularly true if offences were committed in places to which the police did not have access. With the exception of licensed premises, warrants were required before any private property could be entered and searched.

Offences with a victim (e.g. theft, assault etc) were far more likely to be reported than "victimless" crimes where no one individual was directly affected (e.g. public disturbances, licensing violations etc). Either as witnesses or informers, the public were, however, extremely reluctant to co-operate with the police.

Successive legislation (e.g. Ordinances 59 of 1829 and 69 of 1830) ensured the payment of witnesses, whether they were summoned by the public prosecutor or the accused. Despite these measures, which were designed to encourage witnesses, police cases continued to founder and run the risk of dismissal because of a lack of witnesses⁶⁵. In 1834, de Lorentz requested the power to summon to his office anyone whom he believed possessed useful information relating to an offence⁶⁶. It is unclear whether this power was granted, but the majority of ordinances carried a clause which empowered the police to summon witnesses

⁶⁵ e.g. 1/CT 6/6 29 May 1831
1/CT 8/7 Case no 211 1828
1/CT 8/8 Case no 322 1830
⁶⁶ 1/CT 16/24 12 February 1824 de Lorentz to Colonial
Secretary

who refused to give evidence in court. Occasionally these powers were utilized, as for a variety of reasons witnesses refused to impart their knowledge to the agents of the law.

The case of Mary Roach illustrates this point. She refused to give evidence in a liquor smuggling case, fearing that she herself might be prosecuted. Once persuaded that this would not in fact happen, she then refused to swear the Court Oath, on the grounds that in her homeland, Ireland, she would not be expected to do so⁶⁷. The Court Record Books reveal that this Irishwoman was not alone in her misconceptions regarding the law, and in her extreme unwillingness to co-operate.

The example of Vos highlights a slightly different issue regarding witnesses, that of intimidation. This was probably especially pertinent in a relatively small community such as Cape Town, dominated by powerful slave owners and employers. In this instance the witness revealed that his employer, Vos, had threatened to have him placed on the treadmill, if he gave evidence for another apprentice against his master⁶⁸.

As public-spirited witnesses were few and far between, a stimulus was the prospect of financial gain. De Lorentz was keenly aware of the potential utility of informers and wished to extend the practice of their receiving one half of the

⁶⁷ SACA 28 October 1829
⁶⁸ 1/CT 6/17 23 January 1832 Case of Vos

fine⁶⁹. Resident Magistrate, Borchers, realized that in practice, informers were generally despised and rarely received their share of the fine⁷⁰. The poverty of the vast majority of offenders meant that a fine was seldom paid and therefore the usual penalty was a spell in prison. Borchers, in 1842, although appreciative of the value of informers, recommended that if the fine were not paid the Government should not accept responsibility for paying informers⁷¹. This parsimonious attitude on the part of the authorities, meant that even the lasting co-operation of informers was not assured, if they were not guaranteed some financial gain for their efforts.

In direct contrast to the witnesses and informers were those who would not co-operate with the law at all and instead took the law into their own hands. Walsh, for example, who was remonstrating with a woman who had stolen his handkerchief, assaulted a police constable who attempted to persuade him to take her to court⁷². There are many other examples of Capetonians settling disputes in their own fashion and without recourse to the law, especially by violent means⁷³.

The responsibilities allocated to the police were not

69 -----
 70 1/CT 16/24 30 April de Lorentz to Colonial Secretary
 71 1/CT 14/13 14 October 1842 Resident Magistrate to
 Colonial Secretary
 72 1/CT 14/13 2 November 1842 Resident Magistrate to
 Colonial Secretary
 73 1/CT 6/17 14 September 1832 Case of Walsh
 e.g. 1/CT 6/15 29 May 1829 Scott vs Wylde
 1/CT 6/15 20 March 1840 Case of Haupt
 1/CT 6/16 28 April 1831 Case of Cruywagen

confined to merely patrolling and enforcing the law, but included a wide variety of administrative functions. From 1825 the superintendent of police was expected to attend to the cleanliness of the streets, port regulations, prisons, convicts employed in the public works, the supervision of coolies, eating places and canteens and the registration of licences, contracts, births and deaths⁷⁴. Thus, like the judges and magistrates, the police were closely integrated into the machinery of local government and doubtless given tasks that other public servants found beneath their dignity⁷⁵.

With the abolition of the Burgher Senate in 1827, which had previously shared administrative and even some policing tasks, the duties of the police were considerably enlarged⁷⁶. New areas included the supervision of the recently established House of Correction, the Butchers Shambles, the fire engines, the nightwatch and the yearly assizing of weights and measures⁷⁷.

The situation again altered in 1840 with the creation of a municipal government for Cape Town⁷⁸. Town administration was to be shared between the police and municipality, an arrangement

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74 Ordinance 12 1825

75 For a discussion of the role of judges and magistrates see Sachs A 'Enter the British Legal Machine; Law and Administration at the Cape 1806 - 1910' in University of London Institute of Commonwealth Studies: Collected Seminar Papers 1970 Vol 1 pp8-43

76 The Wardmasters were obliged to keep an eye open for strangers and alert the police to any suspicious behaviour. Theal Records Vol 35 pl26

77 Ordinance 48 1828

78 Ordinance 1 1840

which pleased neither party, and triggered off a protracted battle between the two⁷⁹. De Lorentz maintained that the enforcement of municipal regulations was totally incompatible with the role of the "new police" and that the municipality simply wished to reduce the police to little more than street cleaners. De Lorentz' notion of a more professional police stood in direct contrast to the municipality's perception of the role of the police. In 1845 the matter was eventually settled with the appointment of a contractor to clean the streets⁸⁰. In effect, the opinions of de Lorentz and his concept of strictly policing duties had triumphed.

Since the police were in a position of fairly substantial power and responsibility, their professionalism and behavioural standards are extremely important issues. In other areas of the legal machinery considerable improvements were witnessed in this period, but as far as the police were concerned, this proved not to be the case⁸¹.

When, in 1826, de Lorentz assumed the position of police

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Many letters were sent between the police and municipality
e.g. CO 439 14 November 1840, 17 December 1840 de Lorentz
to municipality.

CO 520 12 December 1843 de Lorentz to Colonial Secretary.
Letters were also sent to the local press where the police
were dubbed "knights of the white glove" owing to their
unwillingness to dirty their hands.

⁸⁰ ZA 5 February 1841, 30 March 1841 letters to editor
⁸¹ Warren D 'Merchants, Commissioners and Wardmasters' p106.
e.g. Implementation of the 1827 Royal Charter of Justice
which outlined the structure of the new Supreme Court,
Ordinance 32 of 1827 for creating Justices of the Peace, and
Ordinance 44 of 1828 for creating Courts of the Resident
Magistrate and Police.

superintendent, he was confronted with the unenviable task of organising an extremely incompetent and ill-disciplined collection of men into something resembling a respectable police force.

The most obstinate and pervasive obstacle was drunkenness among the men. Intoxication was not only confined to the constables as even de Lorentz was accused of drunk and rowdy behaviour⁸². It was, however, intemperance among the lower ranks that presented the greatest difficulties. One policeman, for example, was dismissed "for an inordinate use of liquor" which had reduced him to a state of virtual imbecility⁸³. Another policeman "died of brandy" at the age of only 28⁸⁴. Not all cases ended so tragically, but there were many other instances of policemen being drunk and totally incapable of going on duty⁸⁵.

The 1840 police reform attempted to remedy this lamentable situation by fining both the policeman and whoever sold the alcohol. In severe cases the policeman could be dismissed. It was widely recognised, however, that constables discharged from Cape Town could readily find employment in the rural areas which meant that the threat of dismissal did not act as much of a

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Needless to say this case did not come before a court.

⁸³ CO 301 28 February 1827 de Lorentz to Colonial Secretary

⁸⁴ POC 18 13 September 1837

⁸⁵ SACA 7 January 1832 letter to editor

e.g. 1/CT 6/14 2 August 1828 case of Blair

1/CT 6/15 13 August 1830 case of Luft

deterrent⁸⁶. By 1842 the constables were paid weekly rather than monthly in the vain hope that the temptation and opportunity to squander the larger part of their earnings on liquor would be minimalized⁸⁷. The ironic situation continued of constables being frequently drunk, which was the very behaviour that they were supposed to check among the locals.

Of a more reprehensible nature were the instances of police misconduct and brutality. Policemen were indicted (but invariably not convicted) for a variety of offences including ill-treatment, assault, allowing prisoners to escape and generally neglecting their duties⁸⁸. There were even more lurid cases of a rape and murder involving Cape Town policemen⁸⁹. The incidence of police misconduct appears to have been less frequent than attacks on policemen, but these were likely to be substantially under-reported. Complaints regarding policemen had to be lodged with the police superintendent who, from 1834, was also the magistrate of the court which dealt with such cases. The prosecutor was the

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A Government circular was issued in 1844 to the rural magistracies requesting that no constable dismissed from Cape Town be employed in rural areas.

⁸⁷ CO 535 9 September 1844 de Lorentz to Colonial Secretary

⁸⁸ CO 512 4 January 1842 de Lorentz to Colonial Secretary

e.g. 1/CT 6/16 7 April 1831 Case of Constable Ambrose for assault. 1/CT 6/17 11 November 1833 Case of Constable McKoy who allowed a woman into the gaol for the night for the purpose of prostitution.

⁸⁹ Judges 'Poverty' p105

CO 520 7 March 1843 de Lorentz to Colonial Secretary

deputy superintendent⁹⁰. Those who dared venture a complaint against their "custodians" therefore probably stood little chance of an impartial hearing.

On the other hand if the complaint came to the attention of the public or an influential quarter, the victim stood a greatly improved chance of fair treatment. In 1842 the municipality demanded an investigation after policemen allegedly dragged a local farmer through the streets by his hair⁹¹. A correspondent to the SACA in 1839 expressed his sense of outrage after a "fatal affray" on the Parade. Apparently the police intervened in a brawl during which one man received a wound on his thigh from a police sword and subsequently bled to death⁹². The incident was undoubtedly an unfortunate accident, but can hardly have helped to enhance the image of the police in the eyes of the public.

The degree to which the public could unite against the police was demonstrated when a certain Bosman was arrested without a warrant and so beaten in the process that he became unconscious. Indignant letters were sent to the local press on the subject of police brutality and the violation of burgher liberties⁹³. Some sympathisers launched a fund to collect

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Ordinance 4 1834. The police court had previously been headed by the Resident Magistrate, but from 1834 to 1860 this court, which dealt with the vast bulk of cases, was run solely by the police.

⁹¹ 3/CT 1/1/5/5 11 March 1842 de Lorentz to Municipality

⁹² SACA 20 July 1839 letter to editor

⁹³ e.g. ZA 25 February 1831 letter to editor

money for a Supreme Court case against the policemen⁹⁴.

Even if the public were not actively united against the police they often did little to make their tasks any easier. In 1839 de Lorentz complained that if the police were in a fracas and getting the worst of it, there would be no more than "ill-surpressed smiles" among the onlookers⁹⁵.

At the height of the anti-convict agitation in 1849 the police again provoked public hostility. After a stone had been thrown at a mounted patrolman, the police charged a crowd of spectators, which the CTM described as a "savage and cowardly act"⁹⁶. That this was the police's first experience of crowd-control perhaps explains their over-reaction, but again had the effect of alienating the police from the community.

De Lorentz, himself, was not blind to the inadequacies of the police force, although his tone was noticeably more congratulatory after the 1840 reform. In 1838 he wrote that the very name of dienaar "was a byword stamping a worthless

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The fairly considerable sum of 700 rixdollars was collected, which in the event was not needed, as the case was dismissed. ZA 25 February 1831 letter to editor.

95 1/CT 6/16 21 February 1831 Case of Bosman.

96 CO 4000 2 January 1839 de Lorentz to Colonial Secretary

CTM 14 July 1849.

The simmering tensions between the police and municipality were again brought to the fore when the municipality attempted to have Inspector King prosecuted for his role in the affair. This the Attorney-General declined to do, reasoning that King had, quite correctly, acted in the defence of property. 3/CT 1/1/5/37 30 July 1849 Attorney-General to Municipality.

character"⁹⁷. A year later he complained that his aim to improve the police had failed because of the "class of men". In exasperation, he suggested the introduction of recruits from London, as suitable applicants could not be found in the Cape⁹⁸.

On the other hand, there were those whose services were valued and for whom de Lorentz promised some kind of reward. He advocated the establishment of a Superannuation Fund which was accomplished in 1844. Thus pensions were provided for lengthy service, injuries and bereaved families. Ironically part of the funds for this scheme came from fines levied on the constables for misconduct⁹⁹

De Lorentz' new-found enthusiasm after 1840 was also shared in other quarters. The SACA perhaps, however, overstated the case when they reported that "the superior vigilance of the New Police drags every offence into day"¹⁰⁰. With the proposal in 1844 to establish a library for the policemen, the CTM exhorted the public to give generously as they were indebted to the police for the "high degree of safety and tranquillity now so generally enjoyed"¹⁰¹.

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1/CT 16/24 11 October 1838 de Lorentz to Colonial Secretary

⁹⁸ CO 4000 2 January 1839 de Lorentz to Colonial Secretary

⁹⁹ Ordinance 1 1844

¹⁰⁰ SACA 1 January 1842 editorial

¹⁰¹ CTM 16 November 1844 editorial. The article also claimed that encouraging reading would be "a means of diffusing information conducing to steadiness, sobriety and good conduct among the men"

By 1861 one "lady" was able to draw a favourable comparison between the soldiers garrisoned in the Cape Town barracks and the police. She maintained that this was quite different to the situation in England:

"Here the British soldier and the blue-coated policeman change positions entirely as the Knights of the truncheon seem less popular with the cookmaids, are very stiff and unbending and are sharply looked after by their inspectors and sergeants."¹⁰²

Others who voiced an appreciation of the police force were few and far between, suggesting that acceptance of this institution was, at best, tenuous. The police walked a tightrope between public tolerance and hostility. The personal behaviour of the majority of police constables did little to ease these tensions and more often than not the police deservedly provoked public anger and condemnation. The reform of 1840, designed to bolster government authority at a critical juncture, remained something of a dead letter, despite the unstinting efforts of the police superintendent to elevate both the status and standards of the job. Faced with the problems presented by grossly incompetent and totally unprofessional personnel, the situation could hardly have been otherwise. The limitations to the police power were in fact considerable, largely because the police and the "criminals" were of the same class backgrounds and hence had similar interests. That the behaviour of these instruments of the state was far from exemplary, also meant that law enforcement in Cape Town was erratic and uneven.

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A Lady (pseud) Life at the Cape a Hundred Years Ago
(Cape Town 1963) p4

CHAPTER II

CAPE TOWN'S "CRIMINALS": SOME MISCONCEPTIONS

The manner in which Cape Town's police performed their duties and enforced the law was to a certain extent dictated by public opinion, or more precisely the opinion of the dominant classes. The extremely diverse racial and ethnic composition of the community of whom only half were white, ensured that popular "misconceptions", especially pertaining to crime, were highly durable in this period of intense social upheaval. The changing legal status of both Khoi and blacks between 1828 and 1838, engendered a great deal of concern among the dominant classes who felt their hegemony threatened. Thus, groups clinging to a distinct and persistently non-conformist identity and who refused to meet the expectations of the dominant classes in terms of sobriety, hard work and respectability were subjected to a process of negative stereotyping. In response to the pressure of dominant classes a variety of minority groupings were singled out for discrimination at the hands of the police.

Cape Town's magistrates in the period 1840 to 1850 dealt with a yearly average of some 1 400 cases, of which approximately 57% can be termed offences against public morality. The remaining 43% included a variety of offences, of which only theft and related crimes (suspected persons and

receivers of stolen goods) totalling 9% of all crime and instances of refractory servants (5.8%) are of interest for this study pertaining to petty crime. These offences were committed predominantly by males and, excepting prostitution, female involvement in crime was usually fairly marginal (i.e. only 17% of those taken into custody). (See Table 3).

Of the public morality offences, 54% were instances of drunkenness, 11% disturbing the peace, 2% gambling and 1% prostitution. This category of 'criminal' behaviour not only accounts for the largest proportion of offences, but is also indicative of the prevailing mores of the dominant classes, and reveals as much about the law framers as it does about the criminals. Theft and the incidence of refractory servants are also closely linked to the question of control - a key issue at this crucial juncture in Cape Town's history.

From an examination of a variety of sources, the overwhelming impression of the Capetonians who broke the law in this period, is that they were poor¹. Since the term working class is not appropriate owing to the large numbers of self-employed, casually employed, unemployed and slaves, they are best described as an under class. The instances of wealthier residents coming before a magistrate were the exception rather than the norm and were usually only for licensing violations. For the sort of misdemeanours with which

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These sources include indictments, Court Record Books, memorials, prison returns, etc.

this thesis is concerned, the offenders were labourers, servants, boatmen, washerwomen, sailors, soldiers and artisans of various descriptions (e.g. coopers, carpenters, smiths, tailors, shoemakers etc)². (See Table 4)

A letter written by the Municipality in 1840 drew attention to the poverty of Cape Town's law breakers. A large number of fines incurred for violating municipal regulations had not been paid owing to the impoverished circumstances of the offenders who were instead sent to prison. Of the £36 5s that should have been collected that month, only £11 was raised³. The Court Record Books and memorials to the magistrates are further evidence of this poverty⁴.

Other sources (e.g. Indictments, Court Record Books, Records of Proceedings) help to piece together an idea of where the "criminals" lived and committed their offences. Some offences were unlikely to have occurred where the criminal lived (e.g. house breaking, prostitution) but the vast majority probably occurred in the locality of the criminal's place of residence. This was particularly true of public disorder cases such as drunkenness. As the offenders were of humble social origin it

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Philip's study of the Black Country reveals that "Labourers" were also the largest category of offenders, but warns that the term was invariably used very vaguely.
³ Philips Crime and Authority pp167-168.
3/CT 1/1/5/1 30 November 1840 Municipal prosecutor in Police Court to Municipality.
⁴ 1/CT 14/13 Borchers reporting on the memorials to the Colonial Secretary e.g. 10 February 1829 case of Christie, 15 October 1829 case of Kolbe, 9 August 1832 case of David

TABLE 3 CRIMINAL STATISTICS 1840 - 1850

	TOTAL NUMBER OF OFFENDERS TAKEN INTO CUSTODY	TOTAL NUMBER OF OFFENDERS SENTENCED	% MALES TAKEN INTO CUSTODY	% OF TOTAL CRIME OVER 10 YEARS
DRUNKENNESS	4 868	4 339	82 %	30,9 %
DRUNK & DISORDERLY	3 179	25 55	77 %	18,0 %
DISTURBANCE OF THE PEACE	1 342	902	79 %	6,4 %
PETTY THEFT	1 287	1 071	84 %	7,6 %
ASSAULT	1 039	808	94 %	5,8 %
REFRACTORY AND DESERTED SERVANTS	1 001	809	90 %	5,8 %
CONTRAVENING MUNICIPAL REGULATIONS	882	790	76 %	6,0 %
REPUTED THIEVES AND SUSPECTED PERSONS	341	206	89 %	1,5 %
GAMBLING	194	172	98 %	1,2 %
PROSTITUTION	108	107	0 %	0,8 %
RECEIVING STOLEN GOODS	34	29	62 %	0,2 %
MISCELLANEOUS *	2 475	2 214	100 %	15,8 %
TOTAL	16 750	14 002		100,0 %

These statistics are taken from the biannual Police Reports to the Colonial Office. Ten years from 1840 to 1850 were examined except for 1842 which was omitted owing to the incomplete nature of the records for that year.

* The remaining 15,8 % of offences are accounted for by cases of desertion from the Royal Navy and the Army, and sailors deserting merchant ships at harbour in Table Bay

Based on Police Reports C0 502, 512, 520, 535, 545,
562, 570, 575, 584, 598

TABLE 4 OCCUPATION OF OFFENDERS 1839-1850

OCCUPATION	NUMBER OF OFFENDERS	% OF TOTAL OFFENDERS	ESTIMATED AVERAGE WAGE PER MONTH #
LABOURER	488	38,8	<u>£1 16s</u>
ARTISAN *	134	10,7	
SERVANT	123	9,8	<u>£1 7s 8d</u> to <u>£2 1s 8d</u>
WASHERWOMAN	111	8,8	
SAILOR	103	8,2	
FISHERMAN & BOATMAN	36	2,9	
BAKER & BUTCHER	32	2,5	
WAGGON & COACH DRIVERS	29	2,3	<u>£2 5s</u> to <u>£3</u>
SHEPHERD & CATTLE HERDER	28	2,2	
GROOM	25	2,0	<u>£1 10s</u>
APPRENTICE	24	1,9	
SOLDIER	22	1,7	
SEMPSTRESS	17	1,4	
COOLIE	15	1,2	<u>£1 16s</u>
MINOR (under 21)	14	1,1	
PROSTITUTE	14	1,1	
SHOPKEEPER	12	1,0	
VAGRANT	9	0,7	
POLICEMAN	7	0,6	<u>£3 15s</u>
CLERK	7	0,6	<u>£4 12s 2d</u> to <u>£13 16s 9d</u>
NURSE	4	0,3	
BARBER	3	0,2	
GARDENER	3	0,2	
	1 258		

Based on quarter-yearly prison returns (CSC 1/1/1/10 - 14) 1839-1850. Prior to 1839 the returns do not provide information regarding occupation. Those imprisoned were likely to be the poorer offenders anyway as those in prison often could not afford a fine. The figures, however, are still valuable indicators of the variety of occupations of offenders, especially in the absence of other relevant source material.

These wages are based on Judges study of Cape Town's occupation and wage structure in the 1830's. Those underlined fell below her estimated poverty line of £3 8s 10d pm for a family of five. Judges 'Poverty' p5.

* The category of artisans includes a wide variety of skilled and semi-skilled craftsmen e.g. shoemakers, carpenters, tailors, sawyers, masons, blacksmiths, sailmakers, cabinet makers. Their wages ranged from anywhere between £4 10s and £9 pm.

is hardly surprising that their homes and the areas complained of most vehemently to the press, were also in the poorer parts of Cape Town. These were largely in the vicinity of the Barracks, below Strand Street and above Wale Street towards Table Mountain (See Map). According to the Special Wardmasters' Report, investigating the 1840 smallpox epidemic, these areas were "filthy", "over crowded" and inhabited by the "very poor - fishermen, mechanics" and the like⁵. Cape Town was not yet residentially segregated along racial lines and therefore these districts contained a variety of poor whites, Khoi and free blacks⁶.

Since by far the majority of Cape Town's population belonged to this under class it was perhaps inevitable that a correspondingly large proportion of those who broke the law came from this particular socio-economic grouping. Moreover, the very lifestyles of the poor meant that a sizeable number of them were likely to find themselves in court, at some stage in their lifetime. Above all the purpose of the law appears to have revolved around the maintenance of good order and discipline; be it in the work place, recreational venues or the streets. Drunkards, thieves, vagrants, prostitutes, gamblers, smugglers, refractory servants and the like, were to be either reformed or

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⁶ CO 490 May 1840 Special Wardmasters' Report.

Judges 'Poverty' p127.

Residential segregation along racial lines only began to appear in Cape Town in the later nineteenth century.

Bickford-Smith V 'Cape Town's Dominant Class and the Search for Order 1891 -1902' Unpublished paper presented to the Western Cape Conference (UCT 1986) pp28-29, 34-40.

punished. When social control failed, as was often the case in Cape Town (See Chapter IV), more overt control mechanisms were utilized; namely the police and the courts. In effect this meant that the minutiae of the legal code affected the daily lives of members of the under class far more directly than any other.

This did not mean that the wealthy were immune to the due processes of the law but simply that the nature of their lifestyles meant that they were highly unlikely, either intentionally or otherwise, to break the law. On the rare occasion when this did occur, it appears that the police were reluctant to take action. In 1842 the CTM reported a violent confrontation between a gentlemanly ship captain and one of his passengers during which the passenger was wounded. The police, allegedly, did nothing:

"...Such is the peculiar construction of the official conscience that, while any poor scoundrel, suspected of committing any other crime, or the same crime in a different manner, may be hauled off and incarcerated at once - the Police may not even see, without waiting for a warrant the "gentlemen" who is pointed out by the fingers of public execration, as having perpetrated a deliberate and wilful attempt to commit murder".

A more trivial incident further illustrates police partiality. Over the New Year festivities in 1843 a number of premises let off fireworks in contravention of the Municipal regulations. The owners of these premises were prominent figures such as wardmasters and merchants. De Lorentz complained that he could not take steps without coming into

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CTM 26 February 1842

contact with "some of the most respectable inhabitants"⁸. Needless to say, these wealthy individuals were left alone by the police, although arrests were made in other poorer parts of town for the same offence.

Within this under class emerged distinct groupings, which, at given moments received a perhaps undue amount of police attention. One obvious reason for this was the fear engendered by the changing legal status of slaves and Khoi. Another possibility was the perennial need for a scapegoat, especially in a community as racially and ethnically diverse as Cape Town. A crude but effective means of binding the equally divided dominant groupings (i.e. in terms of interests e.g. merchants, shopkeepers, professionals) was to point accusing fingers at minority groupings, albeit large minorities in some instances. In this way "Hottentots", ex-slaves, "Malays", soldiers, sailors and Irish immigrants bore the brunt of public hostility and were held accountable for a multitude of problems and criminal offences. Hostility towards these groupings appears to have always been present, but when the believed malefactors were not white, condemnation was particularly forthright.

A striking feature of the Court Record Books of the late 1820's is the preponderance of cases involving "free persons of colour", especially "Hottentot" women⁹. They were apprehended

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⁹ 3/CT 1/1/5/9 5 January 1843 De Lorentz to Municipality
1/CT 8/7 and 8/8 Criminal Record Books of the Resident
Magistrate's Court for 1828 and 1829 respectively.

for a variety of offences, including vagrancy (See Chapter III), theft, assault, but predominantly for disturbing the peace and being drunk. In the wake of the very controversial and unpopular Ordinance 50, this focus of both public and official attention on the activities of "freed" Khoi was probably inevitable. As Cape Town's "Hottentots" comprised only 18% of the total population in 1828, it was clearly their "free" status rather than numerical strength that contributed to the notion of their being a threat. Closely linked to this perception of Khoi being inherently criminally inclined, was the question of vagrancy and the fact that some Khoi persistently refused to conform to the expectations of the dominant classes in terms of sobriety and hard work.

Judging from the content and tone of contemporary comment the mere fact of being a "Hottentot" sufficed to provoke extremely virulent criticism. Writing on the subject of vagrancy, Boyce described "Hottentots" as a "mass of idleness and vice" who only worked to procure alcohol and when not working lived by theft¹⁰.

Other commentators and contributors to the local press shared this unfavourable assessment of the "Hottentots". The chief complaint pertained to the consumption of liquor to which

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Boyce W B: Notes on South African Affairs (London 1839)
p119.

they were supposedly addicted¹¹. Whilst some undoubtedly did fit this description, a sizeable majority clearly did not conform to this negative stereotyping.

Since "free" Khoi were at or near the bottom of the occupational structure in terms of earnings, some of them probably did resort to crimes such as theft in times of economic hardship¹². A further consideration is that they did not appear to share the same ethics as the law framers and increasingly found their lifestyles at variance with the mores of the dominant classes. If, in deference to public opinion, therefore, the police wished to show that free Khoi constituted a threat, they could all too easily do so.

The prison reports from 1828 to 1836 clearly show the trend in punishing. From 1828 an increasing number of "Hottentots" went to prison, so that within four years their proportion of the total numbers of those incarcerated had doubled (i.e. from

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¹¹ Fawcett J: An Account of an 18 months Residence at the Cape of Good Hope 1835-1836 (Cape Town 1836) p9
Letters of complaint to the press include ZA 7 February 1834 and SACA 5 April 1826.

¹² Evidence of the extreme poverty of some "Hottentots" was the number of them found dead from starvation on the roads around Cape Town throughout the winter months. SACA 15 July 1829 letter to editor. In 1837 the subject was again raised when it was suggested that some kind of provision should be made for paupers. SACA 8 July 1837 letter to editor.

23% in 1828 to 46% in 1832)¹³. It is possible that given their "freedom" the Khoi were in a stronger position to break the law, but more likely that the police were making a concerted effort to regulate their lives and enforce discipline.

A somewhat surprising aspect of the Court Record Books of this period is the large number of female "Hottentots" taken into custody by the police. The figure of white female offenders always tended to be marginal, but male and female Khoi offenders were almost on a par. Their offences were predominantly instances of theft, disturbing the peace, drunkenness, "exposing their naked persons" and "carnal connection"¹⁴. The incidence of theft is perhaps evidence of the difficulty experienced by Khoi, particularly women, in finding employment. The disorder offences reflect a possible sexual bias in the law, as certain offences were always associated with women (such as prostitution, and even in cases of "carnal connection" the male was often not prosecuted). It is also conceivable that behaviour, such as drunkenness, was even more unacceptable among women than men, and therefore their behaviour became the focus of police and magisterial

¹³ CSC 1/1/1/1, 3,5,7,9. Prison Returns for 1828, 1830, 1832, 1834 and 1836. Of course these figures do not take into account the numbers of offenders that received another form of punishment, such as the payment of a fine, or corporal punishment. Nor do these figures include the number of women sent to the House of Correction who were almost exclusively "free persons of colour".

¹⁴ Terms employed in the Court Record Books.

attention¹⁵. In England middle-class contemporaries feared the disintegration of the family unit and were extremely alarmed at the extent of female criminal activity¹⁶. Similar fears were likely to have prevailed among Cape Town's dominant classes.

By the later 1830's public and official hysteria regarding "Hottentots" had calmed down. The anticipated chaos, caused by Ordinance 50 had not materialized, and therefore fears gradually abated. This did not mean that the Khoi had necessarily begun to conform to the expectations of the dominant classes, but simply that their behaviour was no longer the sole source of concern. Complaints, of course, were still made regarding their activities, but with nowhere near the same regularity or

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De Lorentz, for example, was particularly concerned by drunkenness and venereal diseases. He frequently complained of the "wanton" lifestyles of female "Hottentots" who were often "found in the most disgusting state of intoxication". In 1828 de Lorentz claimed, after investigating the case of an abandoned "Hottentot" child, that he had "uncontestable proof.....to what extent of depravity, many of the Hottentot women are reduced from excessive drunkenness". CO 342 11 February 1828 de Lorentz to Colonial Secretary. According to de Lorentz and the Police Surgeon many of the women suffered from venereal disease. Alarmed at the rising number of them admitted to Somerset Hospital for treatment, de Lorentz suggested that they should be forced to work for the government to defray the cost. CO 261 4 July 1826 de Lorentz to Colonial Secretary. The Commissioners of Inquiry attributed the cause of the "Hottentot" women's depraved lifestyle to temptation, drawing particular attention to the "Hottentots" from rural areas who were "thrown without protection into all the temptations of a large town". Theal Records Vol 35 p159. The problems offered by the "Hottentot" women was also one of the main factors prompting the opening of a House of Correction in 1827.

¹⁶ Jones Crime p11.

ferocity¹⁷.

In the 1830's, the focus of attention were Cape Town's slaves, who comprised slightly less than a third of the total population (See Table 1). The Court Record Books of the 1830's reveal that cases involving slaves were predominantly those of desertion and disobedience. In the rare event of a slave attempting to prosecute his master (e.g. for ill-treatment) the tables were invariably quickly turned, and the slave found that he was accused of lodging a "groundless complaint". Contrary to public opinion the extent of slave (and ex-slave after 1838) involvement in either serious or petty crime, was not in fact of vast proportions.

A number of factors explain this phenomenon. Perhaps the most important consideration was the power wielded by slave-owners over their chattels. Slave-masters could exercise extremely effective direct control over their slaves, thus minimizing their opportunities for criminal activities. For many slaves this supervision extended even beyond the work place, since they often had to live with their masters.

If this control mechanism failed to achieve the desired

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e.g. Residents of Zieke and Mostert Streets complained of the behaviour of the "abandoned Hottentot women" who assembled at canteens to meet soldiers. CO 4000 2 January 1839 Memorial to Colonial Secretary. Interestingly, a report appended by de Lorentz stated that the women attempted to defy the police "by asserting their privileges as Free Burghers".

results, a plethora of legal regulations further restricted slave movements in the 1820's. The Commissioners of Inquiry drew attention to the abundance of rules which discriminated against slaves in their lengthy police report¹⁸. For example the police were empowered to take slaves into custody without orders, and if necessary to inflict punishment. "Hottentots and free blacks " were first to be "remonstrated with" but if to no avail could also be arrested without specific instructions. In comparison , whites were given kid-glove treatment. Constables could only "expostulate" with "European" offenders and not arrest them on the spot. A variety of other petty stipulations prescribed acceptable codes of conduct for slaves¹⁹.

The Commissioners of Inquiry recommended that these rules be revised, as the increasing "free" proportion of the population meant they were inappropriate. In 1828 the new "colour-blind" police regulations contained no clauses specifically discriminating against any racial group. Their interpretation was quite another issue, as the police were more than able to single out their victims as they saw fit. Alternatively, rules could be made on an ad hoc basis to deal with specific problems

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18 Theal Records Vol 35 pp136 -138.

19 e.g. Groups of more than three slaves, belonging to different masters, could be immediately punished by the police. Slaves found after dark had to be carrying a pass from their masters and a lantern.

Theal Records Vol 35 p137.

The existence of a large number of rules for slaves could have meant that this "criminalizing" of their specific movements would have led to an increase in the number of arrested slaves. It seems however, that either the law did act as a deterrent or that the slaves became more adept at avoiding the police.

as they arose. Thus in 1829 after a fracas at the theatre, all slaves and free-blacks were expressly prohibited from attending²⁰. In 1831 this rule was still operative, with three policemen stationed at the theatre under orders from the manager to "keep all black boys out"²¹. (The terminology itself is indicative of attitudes toward blacks)

If it is assumed that some crime was as a result of poor living standards, another explanation accounts for the general phenomenon of more free Khoi than slaves breaking the law, even after the end of slavery, when the slave-masters lost their direct control. From an analysis of Cape Town's occupational structure in the 1830's Judges concludes that there were more slaves than free Khoi who could ply a trade. This was attributed to the Dutch masters' personal aversion to trade, and the masters' desire to raise the value of their slaves by providing them with a training²². During the existence of slavery, the slaves had an added advantage over the free blacks and Khoi which was that in times of economic hardship, their masters acted as safety nets. Thus, after emancipation the slaves were poised to assume a virtual monopoly of skilled trades, placing them in a more secure financial position than other free blacks and Khoi. Of course not all slaves were in as advantageous a position (particularly women) which explains why some ex-slaves resorted to theft.

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G G 17 July 1829.

²¹ 17/CT 6/16 20 September 1831. case of Adam.

²² Judges 'Poverty' pp42-44

After 1838 it is difficult to ascertain what proportion of offenders were ex-slaves, as the Court Record Books and other official data no longer made distinctions on the basis of race, ethnicity or previous status of offender. What is certain, is that complaints about ex-slaves were continually voiced to the police and the local press. The opinion of this correspondent to the CTM, describing a group of "liberated negroes" who were rapidly "relapsing into a state of savage barbarism", was fairly typical. His solution was to enrol them into a corps and send them to the Frontier, thus removing society of a great nuisance:

"These fellows are the terror of the inhabitants of the suburbs, and have shown the most determined spirit of resistance in several encounters with the police, who are in fact half afraid of them."²³

A reassertion of power by the dominant classes (that was clearly seen as dwindling) was also evident in the passing of the 1841 Masters and Servants Ordinance²⁴. Masters were given considerable power over their servants, many of whom were presumably ex-slaves. Thus the coercion of slavery was replaced by a slightly more sophisticated control mechanism, which again had the effect of exercising power both within and outside the work place. The relatively small number of prosecutions under this legislation (i.e. a yearly average of only 87) suggests that this did in fact act as a deterrent.

Another distinct category within the under classes was Cape

²³ CTM 16 May 1846 letter to editor
²⁴ See below Chapter III

" A HOTTENTOT "

These sketches of "Hottentots" clearly illustrate the way in which the dominant classes perceived both the male and female Khoi; particularly their alleged addiction to liquor.



" A HOTTENTOT "

From Walker J
Sketches of some of the Various
Classes and tribes inhabiting
the Colony of the Cape of Good
Hope and the Interior of
South Africa, with a brief
account descriptive of the
manners and customs of each.

(London 1851) p 4 + 6

Reproduced courtesy of
South African Library

" HOTTENTOTS "

Lithograph by Charles
Davidson Bell

Pictures such as this would have served to reinforce the prejudices of the dominant classes regarding the Khoi since they are portrayed as violent and inebriate.

B224 in Africana Museum Catalogue



" MALAYS "

Lithograph by Charles
Davidson Bell

In complete contrast to the pictures of the "Hottentots" is this lithograph of the "Malays", who are portrayed as sober, clean and respectable; reflecting the more ambiguous attitudes regarding Muslims.

B225 Africana Museum Catalogue

Reproduced courtesy of
South African Library.

Town's sizeable minority of Muslims, referred to by contemporaries inaccurately as "Malays". They too were subjected to much adverse comment and blamed for particular criminal offences. It is virtually impossible to assess the validity of these accusations, since the status of either "Muslim" or "Malay" was rarely denoted in any of the official records. It seems unlikely, however, that they were any less law-abiding than any other sector of the community and that popular prejudice was the cause of their often very unflattering image since, by definition, they did not share Christian values.

Cape Town's Muslim population was expanding quite significantly in this period. This growth was not only as a result of a natural rate of increase (i.e. reproduction of the existing Muslims) but, more significantly, due to converts. In 1822 the numbers of Muslims was estimated at approximately 2 000. By 1841 the figure was 6 492 and in 1855 about 8 000²⁵. Many of these converts were ex-slaves, a fact which caused some consternation in colonial and church circles. The attempts of the various missionary and church organisations to "civilize" and "Christianize" the Khoi and blacks were negated by the success of Islam to gain a greater number of adherents. In 1840 the number of black and Khoi Capetonians was reported in the Blue Book as being 9 379 (see Table I). Thus if it is assumed that very few converts were of European origin, 69% of

²⁵-----
Shell R 'Rites and Rebellion: Islamic Conversion at the Cape 1808 to 1915' in Saunders C (ed) Studies in the History of Cape Town vol 5 (Cape Town 1984) pp7-8.

Cape Town's blacks and Khoi were converts to Islam, and only 31% either Christian or heathen. It was this element of religious rivalry and non-conformity that probably best explains the unfavourable press that the Muslims received, and why they were made scapegoats for all manner of problems²⁶.

In the 1820's it appears that Muslims, like the slaves, were actively discriminated against by the police. The law allowing for the apprehension of slaves not carrying a lantern was constantly abused, as "Malays" and free blacks were mistaken for slaves and arrested. This "mistaken" identity was attributed to the physical similarities between the two, and to their religious faith. According to the Commissioners of Inquiry, their religion was the cause of suspicion and explained "the marked distinction observed in the exposure of the houses and persons of these classes to entry and arrest."²⁷ It was further added that the police were motivated by self-interest, as they stood to profit from the payment of the discharge fee. A Muslim priest alleged that where free as persons should have been immediately released without paying any fee, it was customary for Muslims to have to pay 4s 2d. If this sum was not paid on the spot, a prolonged period in police custody entailed

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Muslims also appear to have been easily recognizable by their dress. Examples of distinctive items of wearing apparel included a conical straw hat and a red handkerchief. Shell R De Meillon's People of Colour ('some notes on their dress and occupations with special reference to "Cape views and Costumes"; water colours by H C de Meillon, in the Brenthurst Collection. Johannesburg ed A H Smith') (Johannesburg 1978).

²⁷ Theal Records vol 35 pp 138-139

the payment of 9d. The commissioners concluded that to counteract this overzealousness on the part of the police

"and the little respect that is paid by them to the right of personal freedom in any of the coloured classes of the community (a feeling which is not confined to the police constables) render it necessary, we think, to provide a greater degree of protection for the individuals of this class..."²⁸

New police regulations in 1828 and the passing of Ordinance 50 in the same year, meant that in future Muslims could not be legally discriminated against in this manner. The absence of restrictions on the movements of Muslims ensured that public concern on this subject grew rather than abated.

It is important to note, however, that not all attitudes towards the Muslims were characterized by such disapproval. In 1846 at the time of the restructuring of the liquor licensing system, the brewers referred to their "Mahomedan" customers as "sober and hardworking... who generally love peace and quietness"²⁹. The Muslims, of course, were a captive market since, theoretically, their religion did not allow the consumption of any alcoholic beverage other than beer. The brewers also had a personal interest in portraying their customers as respectable, contrasting with the clientele of the rowdy wine houses, as they were attempting to prevent the

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This overzealousness was contrasted with the constables "frequent remissness" in the apprehension of other culprits. The Commissioners Report also mentioned the unpaid compulsory service which "Malays" were obliged to render to the Fire Department and concluded that all such discrimination be abolished. Theal Records Vol 35 pp146-147,151.

²⁹ The brewers feared the loss of Muslim custom by the throwing open of the liquor outlets.
LCA vol 17 item 24 1846, memorial from Cape Town brewers.

doubling of their licence fee (See Chapter IV)

Contemporary visitors to the Cape were also more positive in their opinions of the "Malays". Mayson, a captain in the regiment, described them as generally "superior" to the African due to a native intelligence and to "habits of economy, industry and sobriety."³⁰ Archdeacon Merriman believed that they made the best servants and workmen, and that they were usually temperate³¹. These commentators would have endorsed the view that the Muslims formed some sort of elite within the "coloured" community.

Other commentators were less favourably struck by the Muslims. Champion, an American missionary, believed that Islam actually helped perpetrate crime, although he was clearly biased, as a result of the intense rivalry between Christianity and Islam. After watching a convict party proceed to work on street repairs, Champion commented that "many were Mahometans, whose religion encourages crime by holding out an easy way of absolution." He went on to quote a popular belief, with which he fully concurred. This was that the recent burglaries were caused by Muslims, who, with one of their important festivals

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On the other hand, their vices were considered to be cunning, deceit and petty theft. Mayson J S The Malays of Cape Town (Manchester 1861) pp29-30.
31 Varley D H and Matthew H M (eds) The Cape Journals of Archdeacon N J Merriman 1848-1855. (Cape Town 1957) p9

imminent, stole in order to obtain presents for their imam³².

The ambivalent attitude towards "Malays" again became evident during the hysteria generated by the 1840 smallpox epidemic. It was widely believed that the disease spread particularly quickly among the Muslims owing to their squalid living conditions³³.

The SACA carried two editorials on the epidemic and the living conditions of Cape Town's poor, particularly among the blacks and Khoi. The newspaper carried out an investigation into the allegations pertaining to squalor and filth among the blacks and Khoi and discovered them to be totally groundless. Their opinion of the blacks and Khoi had been improved as they had not discovered the signs of "improvidence", "wrecklessness" and "idleness" that they had been led to expect. On the contrary their houses, furniture and clothes were clean, the people well-mannered, and they helped each other out in times of distress³⁴.

Under the controversial editorship of Fairbairn the

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Booth A R (ed) The Journal of an American Missionary in the Cape Colony 1835 (Cape Town 1968) p6,22 Referring to theft, Champion wrote that, "These people also are such an isolated class in the community and such adepts in their work, that they are rarely apprehended."

33 Bradlow M A 'Islam, the Colonial State and South African History: The 1886 Cemetery Uprisings' (BA Hons Dissertation UCT 1984-1985) pp192-211.

34 Overcrowded conditions were discovered, but the editorials held the landlords responsible rather than the tenants.
SACA 23 May 1840, 27 May 1840 editorial.

nineteenth-century liberalism of the SACA was as equally biased as the missionaries. The SACA, mouthpiece of the mercantile interest, was extremely enthusiastic about useful labour, and favoured a lack of racial distinction in the law to help guarantee this. Whilst the smallpox incident does not directly relate to crime, in the minds of contemporaries there was very often an implicit association between poverty, squalid living conditions and crime, particularly theft.

Another occurrence further highlights the degree of animosity that underlined relations between whites, blacks and Khoi, particularly the Muslims. This storm was caused by the compiling of the jury list, a task which had just been assumed by the police superintendent³⁵. The fairly low property qualification ensured that the petit jurors were from a wide social spectrum³⁶, as became evident in de Lorentz' first list, which included "coolies", "free blacks" and "Malays". Letters of disgust were immediately sent to the local press, describing their selection as a "mockery" since "Malays" would not even be able to read the indictment, and therefore education rather than rental should be the deciding factor³⁷. A SACA editorial followed, also denouncing the property qualification, and supporting the idea of education, since any potential jurors of poor social origin would then be omitted. The editorial stressed that that the multi-racial composition of the jury was

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³⁵ Ordinance 2 1845

³⁶ The criteria for appointment as a petit juror was to own or rent property valued at £15 per annum. Ordinance 1 1843

³⁷ SACA 16 April 1845 letter to editor.

not objected to, but insisted that jurors should be Christians³⁸.

A few months later Justice Menzies ruled that jurors had to believe in God as revealed in both the Old and New Testaments³⁹. Thus de Lorentz' original selection became invalid and Muslims were effectively excluded. The following edition of the CTM carried a letter from a "Mahometan", arguing that Jews should also be excluded from jury service. In practice this was not the case, as many Jews had served as jurors in Grahamstown. The writer concluded that if the authorities knew of this fact, "I think we have reason to believe that colour and not unbelief has caused our rejection."⁴⁰

Although there was a great deal of rivalry between Islam and Christianity, the "Mahometan" was probably correct in his assumption. The prospect of a Muslim sitting on a jury, perhaps in the case of a white, Christian offender, undoubtedly shocked a large proportion of people. It is interesting, however, that the original lists had included poor blacks and Khoi, and that the superintendent of police had been responsible for their compilation. In other matters he was not as open-minded.

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A letter in the same edition described the jury list as a "perfect and intolerable mockery" as the "Malays" and blacks would not be able to cope with the forthcoming criminal session, which was believed to be a complicated one SACA

³⁹ 26 April 1845, editorial and letter to editor.

³⁹ SACA 23 July 1845 editorial

⁴⁰ CTM 26 July 1845 letter to editor

The same superintendent, in 1827, questioned the wisdom of granting a liquor licence to Adam van de Kaap, a slave. It was apparently the first request of its kind and de Lorentz firmly believed that it would result in an increase in crime. He therefore demanded the right to search the premises at any time and that Adam be accountable for any "suspected property"⁴¹. De Lorentz' attitude illustrates the widely-held belief that black, Khoi, low drinking houses and theft were inextricably linked.

On the other hand, de Lorentz could find himself in the position of defending blacks in his employ. In 1837 a "black" nightwatch patrolman was assaulted by two soldiers and called a "black rascal". When trying the case de Lorentz found the soldiers guilty. The men promptly appealed to the Resident Magistrate, who declared them innocent. Angered at having his decision overturned, de Lorentz contended that the attack had only occurred due to the skin colour of the patrolman, who was far more trustworthy than many white watchmen⁴².

On the whole, however, it appears to have been recognized that Cape Town's blacks and Khoi differed from those in the rest of the Colony, particularly at the frontier. A glimpse at the local press reveals the most derogatory language employed to describe the blacks, especially during one of the frontier

⁴¹ CO 301 9 March 1827 de Lorentz to Colonial Secretary

⁴² SACA 1 February 1837 de Lorentz to editor

wars. A letter to the Grahamstown Journal reflects a fairly typical viewpoint. The black tribes were described as having "demoralized" customs, revelling in acts of appalling cruelty, and among whom theft was customary. The need was stressed for an "enlightened government" to "Christianize" and "humanize"⁴³.

The SACA used quite different terminology to describe Cape Town's blacks, although this was almost to be expected given the interest of the paper in labour. An 1842 editorial argued that where persons did not have to exert themselves, they would not do so, whatever their colour. Emphasizing the belief of the Victorian dominant classes in the efficacy of education, the SACA wrote the following on the subject of the proposal to alleviate the labour shortage by importing labour from Europe:

"...that the distinction of black and white was in every sense superficial. The only practical distinction in this case is in training, in habits, in custom, in a word EDUCATION ... the native of Cape Town is not more unlike the native of Paris or Manchester, than he is unlike the native of Cafferland or Timbuctoo. In the interior of the colony, you will find Natives of the same colour, and the same outward appearance, as different in character as the natives of the most distant countries can be; and this remark holds equally good with respect to the white as the black, the European as the African."⁴⁴

The SACA stressed that the fundamental division between white and black was as a result of differing education standards but,

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Reprinted in CTM 10 February 1844 letter to editor.
Freund also argues that the "frontier mentality" did not necessarily dominate the rest of the colony. Freund W M 'Race in the Social Structure of South Africa 1652-1836' in
⁴⁴ Race and Class 18(1) 1976 p54.
SACA 7 May 1842 editorial

of course, the correlation between education opportunities and colour was quite marked.

In Cape Town, steps were being made to convert the blacks and Khoi to Christianity and to provide a rudimentary education. It is probably irrefutable, therefore, that blacks and Khoi in the mother city were quite distinct from those elsewhere in the colony. For example, by the 1840's there were a total of some 13 schools and at least 11 churches and chapels in Cape Town, some of which catered almost exclusively for blacks and Khoi⁴⁵.

Despite the slow headway being made to Christianize and educate the blacks and Khoi, they were still blamed for the increasing level of crime in Cape Town. It seems, however, that whilst racial prejudices were still only beginning to emerge in an articulated form, these attitudes were by no means hardened. Freund sums up these sentiments in the following manner:

"... a thorough going racialism as distinct from prejudice against slaves and servants seems to be manifested mainly as a snobbishness afflicting the better classes."⁴⁶

The existence of "colour-blind" legislation which could, however, be effectively utilized to discriminate against the poor, who were predominantly although not exclusively blacks and Khoi, corroborates this point. The Masters and Servants

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Figures from CBB 1845, 1847, 1850. The congregation of St. Stephen's Church in Hottentot Square, for example, was recorded as comprising ex-slaves and their descendants, who were principally from the "labouring classes" or servants.

⁴⁶ Freund "Race in the Social Structure of South Africa" p62

Ordinance, and regulations regarding public recreation are but two examples of legislation designed to bolster the hegemony of the white dominant classes and their control over the poorer black and Khoi masses.

The readiness, however, to regard all the poor as blacks and Khoi, and to attribute all criminal behaviour to them was a gross distortion of the reality, a fact that was conveniently overlooked by the vast majority of commentators. It appears from the Court Record Books, that as many as 50% of the total numbers of offenders, for any given period, were likely to be white males, arrested for assault, disturbing the peace and particularly drunkenness⁴⁷.

Following the trial (at which one of the witnesses appeared drunk) of a white man, for a murder which he committed whilst drunk, a writer to the SACA felt it opportune to point out that breaking the law was not confined to blacks and Khoi, as popularly believed:

"It has become too common to descant on the depraved manners of the Hottentot and coloured population, and the crimes of slaves, but these unfortunate men furnish an example of well-trained and in some instances of educated Europeans sinking ... below the level of the unreclaimed and most neglected of the Natives."⁴⁸

The behaviour of "Europeans" was still judged in relation to the "Natives" but the writer at least shows an awareness of the

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The incomplete nature of the Court Record Books and the difficulty of ascertaining race merely from names, means that an accurate quantification of the extent of white male criminal activity was not attempted.

⁴⁸ SACA 25 August 1830 letter to editor

existence of crime committed by whites. Another contributor to the SACA, some 10 years later, was aware of the undesirable behaviour of some whites. Describing the recent races the writer portrayed the 'colored' spectators in glowing terms and concluded that "if all must be told, decidedly the most blackguard-looking section of the assemblage had white skins"⁴⁹.

Most visitors to the Cape usually only commented on the unrespectable habits of the Khoi and blacks. A notable exception was Fawcett, a military visitor. He attributed the problem of drunkenness, the extent of which he believed to be even worse than in India to:

"...the English settlers (I speak of the lower orders and immigrants) (who) are caught by the cheapness with which they can procure these intoxicating potions, and give themselves up to unlimited indulgence in the use of them."⁵⁰

In 1843 a Police Report drew attention to some of Cape Town's most frequent offenders - a mixed bag of European immigrants, blacks and Khoi. Of these 27 regular offenders, 5 were from Ireland, 4 from England and 3 from Scotland. The slaves were described as 9 "Bastard Hottentots", 1 bushman and 5 Mozambicans. Their crimes were drunk and disorderliness, petty theft and prostitution. Of the 12 women, 5 were from Britain and between them had notched up 194 convictions in the space of 3 years and 3 months. Of the 15 men, 7 were from Britain and

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⁵⁰ SACA 8 November 1843 letter to editor.

He also noted that canteens were kept predominantly by the English rather than the Dutch. Fawcett 18 Months Residence pp8-9

between them shared 116 convictions⁵¹ There were many other white men and women with similar experience in breaking the law (see Appendix).

Apart from very infrequent exceptions these white "criminals" were likely to be of humble social origin. As Judges points out, Cape Town's poor were by no means exclusively Khoi or black, although there was a correlation between skin colour and earning potential⁵². Unskilled whites often had a precarious financial existence and could find themselves in competition with blacks and Khoi at the bottom of the occupational structure⁵³.

One group of immigrants who fitted the description of "poor white" were the Irish. It is important, however, to view comments made about the Irish within the broader context of the prevailing anti-Irish sentiments felt by the English, particularly in the wake of Roman Catholic Emancipation of 1827⁵⁴.

Figures relating to the numerical strength of Cape Town's Irish have not been located but it is clear that they were a

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CO 520 19 September 1843 Report of Inspector King.

⁵² Judges 'Poverty' ppl-56.

⁵³ Judges 'Poverty' p55.

⁵⁴ The friction between English and Irish is also documented by Jones who describes Irish assaults on policemen in Merthyr Tydfil, confrontations between English and Irish workers in mid-century Manchester and the phenomenon of Irish vagrants in England in the 1840's after the Irish famine. Jones Crime ppl04, 154, 181.

culturally distinct part of the community. The area in which they lived gained the nickname of "Irish Town", which was somewhere in the vicinity of the Barracks⁵⁵ (see Map). In 1823 a large number of Irish labourers were brought to the Cape and in 1840 a further 220 Irish immigrants arrived⁵⁶. Many of the soldiers garrisoned in Cape Town were also of Irish origin, who had joined the army to escape the poverty in Ireland and later bought their discharge at the Cape, rather than return home. Some of these immigrants were skilled but the majority were not so fortunate and had to accept lowly paid jobs as labourers, servants and policemen⁵⁷.

In 1827, at the height of anti-Roman Catholic (and hence Irish) sentiment in Britain the Commissioners of Inquiry had written:

"In Cape Town and the vicinity, burglaries have become more frequent of late than formerly, and the recent immigration from Ireland appears to have led to an increase in the number and violence of personal assaults, aggravated generally by the effects of intoxication"⁵⁸.

The alleged addiction of the Irish to liquor was a widely-held belief, and in some instances was obviously not fictitious. By 1829 a number of the 1823 Irish immigrants had

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The precise location of "Irish Town" is unclear. De Lima describes it as simply being within wards 44 and 45 in District 12, and comprising only very small numbers. De Lima's Almanac 1848 pp228, 230. The reference of the Attorney-General to "Irish Town" being in the vicinity of Boom and Barrack Streets corroborate this.
AG 2614 25 March 1836 Attorney-General to Colonial Secretary
⁵⁶ Judges 'Poverty' pp51,148.
⁵⁷ Judges 'Poverty' p149.
⁵⁸ Theal Records vol 33 p 18

apparently died from an excessive consumption of brandy⁵⁹. These unfortunate deaths would only have had the effect of reinforcing the prejudices of the dominant classes especially among the English Capetonians.

The 1836 Attorney-General's report on the Sabbath was extremely scathing about the "lower Irish, intermingled with some English and Scotch, chiefly resident in Irish Town, Coffee Lane and the other lanes issuing from Boom and Barrack Streets". This report isolated three main categories of offenders of whom the Irish were described as the "most degraded". Oliphant believed that a large proportion of these Sabbath breakers were pensioners who had developed an "insatiable thirst for spiritous liquors" and who, therefore, when paid on Saturday evening laid "in a stock of drink which generally confines them to their houses till Tuesday or even Wednesday morning". A number of "Cronies" often clubbed together to buy the desired half aum of wine, and their wives were allegedly as bad as their husbands. Oliphant explained that these Irish men and women rarely offended public decency because "their orgies" were confined "to their own wretched lanes." He concluded by stating that he had "known them never take off their clothes, nor even pass the threshold of the door to perform the calls of nature, so long as a drop was left."⁶⁰

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⁶⁰ SACA 19 December 1829.

AG 2614 25 March 1836 Attorney-General to Colonial Secretary.

With the swelling of the Irish population in the 1840's, the volume of complaints about them grew. "Irish Town" in particular was frequently found fault with. The more respectable residents of "Constitution Village" (another term for "Irish Town") were especially given to complaint, as it was felt that the behaviour of some locals lowered the tone of the whole neighbourhood. Stores and houses were apparently left open, thus attracting vagrants and disorderly persons⁶¹. One of the most notorious premises was the dilapidated building known as "Jones' Castle" which was a well-known gathering point for vagrants, prostitutes and disorderly persons, who were then arrested there by the police⁶².

In 1841 the Commissioners of District 12 wrote a report on "Jones' Dorp" ("Irish Town"), stating that "Jones' Castle" was the venue for all manner of illegal goings on and that, as a deterrent, the building should be sealed off. To prevent the more respectable inhabitants moving out of the area, it was also stressed that a more regular police force was necessary⁶³. A second report commented that:

"morality is here altogether at stake and that unless some arrangement can be made with the Superintendent of Police, to have a regular establishment of constables in this part of town, it will soon sink far beneath any place of notoriety like St Giles and others in the City

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3/CT 1/1/5/3 June 1841 memorial from 13 residents of Constitution Hill and Constitution Village to Municipality
⁶² For example in one week in July 1841, of the 19 by-law violations, which were predominantly instances of loitering and prostitution, 6 were committed in "Jones' Dorp".
ZA 2 July 1841. This was by no means unusual.
⁶³ 3/CT 1/1/5/4 12 October 1841 Report of Thalwitzer, the Commissioner for District 12, to the Municipality.

of London."⁶⁴

By the 1840's "Irish Town" was losing its purely Irish character. After slave emancipation a number of ex-slaves moved into this area, and an analysis of street directories shows that a sizeable proportion of Khoi also resided in this expanding part of Cape Town⁶⁵. The area, however, was still associated with the poor Irish who had originally settled there, although it was perhaps the additional population ingredient that heightened concern about crime in the neighbourhood.

Cape Town also acted as host to a sizeable floating population in the form of soldiers stationed at the Barracks and sailors from passing ships. Although some soldiers stayed in the town for lengthy periods and even bought their discharge there, neither group formed a fixed part of community and were very much regarded as outsiders. As outsiders the soldiers and sailors were never totally accepted by the community. This led to a certain amount of hostility, which the behaviour of the soldiers and sailors did little to ease.

As single men in a foreign climate, it was to be expected that soldiers and sailors would be eager to partake of Cape Town's amusements - legal or otherwise. The Court Record Books reveal that soldiers and sailors were arrested for theft,

⁶⁴ 3/CT 1/1/5/4 26 October 1841 Report of Thalwitzer.

⁶⁵ De Lima's 1848 Almanac described "Irish Town" as housing a collection of labourers, "coolies", and washerwomen. 5 of the 15 names were seemingly those of white persons, but none were Irish, and the other names could have been those of ex-slaves. Almanac 1848 p228.

assault, desertion, occasionally "exposing their naked persons", but more commonly drunkenness and disturbing the peace. They also exacerbated the liquor smuggling problem, as sailors were only allowed shore leave on Sundays when legitimate retailers were closed by law. Soldiers therefore waited on the jetty to escort sailors to the smuggling houses⁶⁶. Inspector King reported that many of the smuggling houses were even kept by discharged soldiers and sailors⁶⁷.

Letters were sent to the local press complaining of the conduct of soldiers and sailors. In 1832, for example, a correspondent questioned the wisdom of allowing the soldiers to carry their bayonets when not on duty. Apparently, whilst drunk, the soldiers used these weapons "threateningly and aggressively" especially when brawls broke out in the streets or canteens⁶⁸. Another letter described the behaviour of the soldiers as "disorderly", "unmanly" and "unhallowed"⁶⁹.

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CO 502 9 February 1841 Report Of Inspector King. At a meeting in 1831 to establish a Cape Town "Temperance Society," it was alleged that naval and military pensioners used their entire pension to procure liquor.
SACA 14 December 1831.

⁶⁷ LCA Vol 17 April 1846 evidence of Inspector King. In Britain intemperance in both the army and navy was a recognized problem. In the 1834 Select Committee Report on Drunkenness it was claimed that the efficiency of both these institutions was grossly impaired by insobriety, which was described as "a cancer worm that eats away its strength and its discipline to the very core."
Over-indulgence in liquor, on the part of soldiers and sailors, thus led to insubordination, lack of punctuality, debt, crime and public disturbances. "Report of Select Committee on Drunkenness." 5 August 1834. BPP p 559.

⁶⁸ SACA 17 December 1832 letter to editor

⁶⁹ CTM 25 December 1841 letter to editor.

In response to this last letter, a member of the 25th regiment was prompted to explain the plight of the average soldier. He believed that soldiers in Cape Town were treated with less respect than the "Hottentots" which made them "feel that they are looked upon as the lowest grade in society; that they have as it were lost caste - it is then that they fly to the inebriating cup". Other factors were mentioned which made life unpleasant for the soldier, including no "harmless" forms of recreation, no newsrooms, exclusion from family circles, not being addressed with respect, and the existence of a regulation which prohibited their going further afield than one mile from the Barracks without a pass⁷⁰.

By the 1840's even the military authorities were aware of the fact that the behaviour of the average soldier was far from exemplary. Thus in 1840 a "Regimental Temperance Society" was established, which held tea meetings and soirees in the Barracks⁷¹. The membership of approximately 100 was more likely to be officers than privates, and was probably doomed to make little headway in a community where the only recreation available to soldiers was centred on canteens and alcohol.

In 1844 a different strategy was adopted with the opening of an army savings bank. The object of the bank was to encourage "habits of prudence and economy in the British soldier and thereby (of) diminishing as much as possible, all temptation to

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CTM 8 January 1842 letter to editor.

⁷¹CTM 1 January 1842 letter to editor.

intemperance, and its consequence, insubordination". The Bank was vested with wide discretionary powers, since if it were suspected that the soldier wished to make improper use of his money, a withdrawal could be disallowed⁷². The obvious pitfall was that those who wished to squander their money were unlikely to deposit their earnings in the first place. Again intentions had a minimal impact, and the soldiers' lives went on much as before.

The sailors provoked even more adverse comment than the soldiers. Spending long periods at sea, the sailors' desire for recreation was understandable, and it was probably because they were only in port so infrequently, that the sailors committed the excesses so regularly complained of.

Under the old-style police of the 1820's, the sailors had been subjected to strict surveillance by both the police and wardmasters. Sailors were not allowed to spend the night on shore without a pass from the Fiscaal and if found in canteens or even in the streets after 9 o'clock could be confined to gaol for the night. The Commissioners of Inquiry, however, expressed doubts about this practise as the measure was enforced with a severity disproportionate to the offence. They recommended that in future, sailors should only be arrested if they had actually committed an offence⁷³.

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CTM 16 March 1844 letter to editor.
73 Theal Records vol 33 pp140-142.

The ending of these regulations in 1828 meant that control over the sailors was considerably eased. Thus their opportunities to break the law were probably proportionately enlarged. As the sailors were only in Cape Town for very short periods, they were often off to sea before they could be apprehended by the police and their case come before a magistrate⁷⁴. Nonetheless the number of sailors in the Court Record Books was fairly substantial.

The plight of the sailors eventually came to the attention of a group of individuals who formed a "Sailors' Benevolent Society". It was stressed that their "moral improvement" was essential to avoid the problem of sailors being led astray "by the vilest of characters" to the "asylums of vice" that a seaport had to offer. If this were not accomplished, the sailors only spent "their money on drink and their time in debauchery"⁷⁵.

In 1842 a SACA editorial reported that the attention of "Governments and of humane societies and benevolent individuals" had recently been drawn to the sailors, owing to the peculiarity of their lifestyle. The sailors were described as

"...rather a favourite class, being regarded by the rest of the world with a certain degree of fondness, as great over-grown lubberly boys, incapable of

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This complaint was made by Inspector King in connection with the difficulty of successfully prosecuting smugglers. The customers were often sailors, who could not be called as witnesses, since they were off to sea on either the same or the following day as the arrest was made.

75 CO 502 9 February 1841 Report of Inspector King.
SACA 27 January 1841 letter to editor.

self-control... Their follies and even their vices were met with indulgence, as being strangers everywhere, no neighbourhood was long troubled with the irregularities of the same individuals, and even the magistrate was often satisfied with the assurance of a culprit, if he promises to "be off" as soon as he could find a berth."

This "forbearance" however declined and it became necessary to inculcate new habits and morals among the sailors. The object of the article was to persuade a few wealthy Capetonians of the advantages to be derived from a Sailors' Home. The aim of the home was "the elevation of taste and habit (and) the introduction of a better class of sensations than those which he is debased in his ordinary haunts ashore"⁷⁶.

If the Sailors' Home failed to exert a moderating and reforming influence, the police and magistrates could, of course, establish control in a far more overt manner. This was facilitated in 1860 by the establishment of a separate "water police"

"for the suppression of thieving in and from cargo boats and upon the public wharfs, for the suppression of mutiny and insubordination on board ship and for other purposes connected with the protection of property and the preservation of good order in the harbour of Table Bay."⁷⁷

An examination of the Water Police Reports for 1863 reveals that they carried out similar sort of duties to those performed by the ordinary police in the 1830's and 1840's. These included the apprehension of drunkards, deserters, thieves, smugglers and the like⁷⁸.

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⁷⁷ SACA 29 January 1842 letter to editor.

⁷⁷ Cape Town Water Police Act 1860.

⁷⁸ 1/CT 16/111 Water Police Reports for 1863.

expansion of port facilities, a separate police branch was necessary to deal with an increasing volume of unruly sailors.

It is clear that Cape Town's dominant classes harboured many misconceptions and prejudices regarding the city's criminals. Minority groupings, particularly outsiders and newcomers, whose lifestyle persistently refused to conform to the expectations and standards of the dominant classes, suddenly found themselves the object of police attention. Thus "misconceptions" became reality as negative stereotyping led to police discrimination. In many instances, of course, the police did not need to actively discriminate, since the white, Khoi and black poor so clearly did not share the same ethics as the law framers and broke the law anyway. The law was ostensibly colour-blind but with the changing legal status of the Khoi and blacks a mounting racial paranoia is discernible. Racial attitudes were still only beginning to crystalize⁷⁹ and had yet to harden, but were an ominous portent for Cape Town's future. In the first half of the nineteenth century, however, the control of the white dominant classes over the diverse racial mix of the under classes was adequately maintained through the agencies of the law and the police. The divisions and tensions in Cape Town were predominantly those of class (dominant and under classes) but tinged with the added dimension of skin colour.

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Elphick and Giliomee argue that racial attitudes were beginning to crystalize towards the end of the eighteenth century. Giliomee H and Elphick R "The Structure of European Domination at the Cape 1652-1820" in Elphick and Giliomee (eds) The Shaping Of South African Society pp359-390. For a somewhat different analysis of the questions of class and race see Bradlow E "Emancipation and Race Perceptions at the Cape" in South African Historical Journal 5 1983 pp10-33

CHAPTER III

THE PERCEIVED CHALLENGE: VAGRANCY AND THEFT

Like the criminals, the legal code and therefore crimes, are to a large degree determined by their context. Changing circumstances entail a reassessment of what and whom is considered criminal. The questions of perceptions and attitudes are of fundamental importance to the law-making process. In this critical period of substantial change in Cape Town, the attitudes of the dominant classes regarding crime had a direct bearing on the law and its implementation. Negative stereotyping of Khoi and blacks in particular served to reinforce the feelings of suspicion and latent hostility that characterized social relations between the dominant and under classes. The rule of law was therefore an assertion of control not only of one class by another, but also of one race by another. The issues of vagrancy and theft, inextricably linked in the minds of Cape Town's dominant classes, highlight the manner in which they regarded the law and how they envisaged manipulating the legal code to bolster their control.

In England, vagrancy was a very topical issue throughout the nineteenth century. The term vagrant usually denoted a person of no fixed abode "with no visible means of subsistence"¹. It

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Radcinowicz Criminal Law Vol 4 p14

could also be a catch-all category and a vagrant law was used to conveniently dispose of all manner of petty offenders and suspicious persons². From a middle-class perspective, vagrants were considered extremely undesirable as they refused to become members of a docile workforce. In an age of industrial expansion and growing middle-class pre-eminence, a reliable labour force was deemed essential³. The lifestyles of the "wilfully poor" and "lazy vagrants" were found totally unacceptable by the middle classes who believed in hard work and respectability⁴. From the 1820's onwards the vagrancy laws in England were thus systematically extended to enable the authorities to exert control over this blatantly different and 'threatening' sector of the population⁵.

In the Cape all of the above fears and interests were evident, but the entire issue was further complicated by the diverse racial composition of the colony's population. The 1830's in particular gave rise to an almost hysterical campaign by the colonists for a vagrancy ordinance. Although ultimately unsuccessful, the range of opinions that the episode engendered are extremely revealing on two important issues. The first is the question of attitudes and prejudices regarding the "natives"⁶. The second, the manner in which the law could be

² Radcinowicz Criminal Law Vol 4 p21

³ Jones Crime pp183, 198-199

⁴ Jones Crime p178

⁵ Radcinowicz Criminal Law Vol 4 p17

⁶ Jones Crime pp198-199

In the broadest usage of the term by contemporaries this appears to have included both Khoi and blacks.

manipulated by vested interest groups to deal with what or whom was perceived to constitute a threat.

It was a widely-held belief in the colony that the "natives" were naturally idle and that if given a choice would opt for a life of laziness and liquor. An official report written for the British authorities in 1796 stated that "The natural propensities of the Hottentots are to indolence..." and that both the "Hottentots" and "caffres" were "guided by that invincible aversion to labour"⁷. This comment was echoed by successive generations of commentators.

Clearly if the "natives" would not voluntarily offer their labour, they would somehow have to be coerced. As part of their mission to "civilize" the "natives" many colonists felt it their duty to instil the Protestant work ethic⁸. This was especially pertinent as the colony continually experienced labour shortages. Vagrancy legislation would effectively deal with those who would not integrate themselves into the labour market.

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BO 222 'Sketches of the Political and Commercial History
of the Cape of Good Hope' c.1796 pp27-28
⁸ Schreuder D M 'The Cultural Factor in Victorian
Imperialism: A Case Study of the British "Civilizing
Mission"' in Journal of Imperial and Commonwealth History
4 1976 pp203-317

With specific reference to Cape Town, the Gardens'
Memorialists wrote in 1834 that there was a need to raise the
"Immoral State" of the "coloreds'" lives, to curb their "evil
dispositions" and to encourage them to become "useful" and
"virtuous" members of the community. LCA Vol 6 Memorial of
proprietors and inhabitants of the Gardens. Cape Town
18 July 1834.

Unlike England, the Cape had no legislation dealing with vagrancy. Despite the absence of laws which criminalized this particular lifestyle, certain groups of people were labelled as vagrants and received punishment as such. In 1825 for example, an ordinance was issued empowering the police to apprehend and if necessary shoot any gangs of vagrants⁹. The ordinance stressed that these people were "desperate offenders" living as they did from the proceeds of theft.

In 1829 Cape Town's Resident Magistrate, Borchers, wrote to the Colonial Office on the subject of vagrancy. He explained that from time to time vagrants were brought to his attention by the police, but he was unsure of how to deal with them especially as doubts had been expressed as to the legality of sentencing¹⁰. The Colonial Office was of little help and merely noted that legislation was indeed necessary¹¹. Over a year later Borchers again communicated with the Colonial Office requesting instructions on how to proceed in such situations¹².

The conspicuous lack of any law or directive did not deter

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⁹ Ordinance 9 1825.

¹⁰ Borchers defined vagrants as persons "leading a wandering life, destitute of home or employment or reasonable means of subsistence." Into this category fell slaves who had deserted their masters. 1/CT 14/13 10 January 1829

¹¹ Resident Magistrate to Colonial Secretary.
CO 372 10 January 1829 comments appended by the Attorney-General.

¹² 1/CT 14/13 23 June 1830 Resident Magistrate to Colonial Secretary.

either the police or Cape Town magistrate, who occasionally sentenced vagrants to imprisonment. In February 1834, for example, 17 people were convicted on charges of vagrancy, at least one of whom was white¹³. Although they knew their actions to be strictly illegal, the police and magistracy obviously had few qualms about taking the law into their own hands in this manner.

As far as the majority of colonists were concerned, the Cape Town Magistrate and police, and possibly others like them, who manipulated the law in this way, could only deal with the tip of the iceberg. The only real solution lay in comprehensive legislation, so that instead of living in the "degraded state" of vagrancy, individuals became "useful" members of society¹⁴.

In the 1830's, the topic of a vagrancy ordinance prevailed throughout the entire colony. With slave emancipation imminent it was widely feared that freed slaves would avoid the control of an employer and lapse into a life of debauchery and crime. These fears were particularly acute in rural areas especially the frontier, but were also shared by a large number of Capetonians who anticipated the total overthrow of the status quo. What exacerbated an already difficult and touchy situation was the passing of the extremely controversial Ordinance 50 in 1828. The effect of this Ordinance had been to place Khoi on an equal legal footing with whites and to abolish the pass law

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¹⁴ 1/CT 8/3 February 1834 Court Record Book.
 ZA 7 February 1834 letter to editor.

system, dating back to 1809. Thus Khoi were free to move about the colony, sell their labour as they wished and could not be criminalized as vagrants. Complaints were promptly made by both officials and colonists that theft had increased and the labour supply had become problematic and intermittent¹⁵.

In May 1834 the Legislative Council bowed to the wishes of the colonists and passed a Vagrancy Ordinance. This piece of legislation allowed for the apprehension of those whom the magistrate "may reasonably suspect of having no honest means of subsistence or who cannot give a satisfactory account of themselves"¹⁶. The elasticity of the terminology would undoubtedly have meant a large number of arrests. After the publication of the Ordinance in the Government Gazette¹⁷, memorials poured in to the Legislative Council, for the most part congratulating them on the wisdom of their decision.

Using the example of the "Hottentots" to illustrate their fears, memorialists pointed out the perceived dangers of the forthcoming slave emancipation. The Civil Commissioner for the Cape District described the situation in the winter after the passing of Ordinance 50 when "Hottentots" were seen at all hours of the day in a "state of intoxication" and "entire nakedness" on the roads leading into Cape Town. Some unfortunate

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Marais J S The Cape Coloured People 1652-1937 (London 1939) p181.

¹⁶ Macmillan W M The Cape Colour Question: A Historical Survey (London 1927) p234.

¹⁷ GG 9 May 1834.

"Hottentots" had even fallen prey to the combined detrimental effects of alcohol and inclement weather and died. The commissioner concluded that "they must either steal or starve!!"¹⁸. The pitiful plight of impoverished "Hottentots", doomed to starvation, evinced absolutely no sympathy.

The association of vagrancy and crime was echoed by other petitioners. Residents from the Gardens, bitterly complained of the need for legislation as they had been plagued by the recent spate of thefts from their gardens and homes¹⁹. Wynberg inhabitants felt that they in particular needed legislation because Wynberg served as a rendezvous for "all the worst characters, runaway slaves, Hottentots, and the worst description of Europeans." These "characters" allegedly lived by hiding themselves during the day and robbing by night. Since there were numerous opportunities for disposing of stolen goods, they then exchanged their spoils for brandy and wine²⁰. It is striking that these memorialists mentioned the involvement of "Europeans" as vagrancy was usually regarded by the dominant

¹⁸ LCA Vol 6 Report of Civil Commissioner, Cape District on Dr Philip's Memorial 23 June 1834.

¹⁹ LCA Vol 6 Memorial of proprietors and inhabitants of the Gardens, Cape Town 18 July 1834. Gardens residents probably felt particularly vulnerable on the outskirts of town and far from a police patrol.

²⁰ LCA Vol 6 Memorial from inhabitants of Wynberg, Diep River, Steenberg, Constantia, Wittebomen, Hout Bay and Rondebosch 17 July 1834.

classes as an offence that did not involve whites²¹.

A writer to the ZA was also deeply concerned by the forthcoming emancipation as he firmly believed that this would lead to the financial ruin of the slave-owners. He argued that slaves who had already been set free, had not become useful members of society, but merely worked when they fancied and promptly squandered their earnings on alcohol. To illustrate his point he cited the examples of "Hottentots" and free blacks inhabiting the downs near Muizenberg and Hout Bay, who lived by "systematic robbery" and "plunder"²². This intermittent labour supply was clearly unacceptable, as both slave owners and employers felt their power greatly diminishing.

Other memorialists stressed the immoral aspects to vagrancy. The general assumption was that the colonists' role was to curb the naturally evil dispositions of the "natives" and to transform them into virtuous members of a society that would then welcome them with open arms. Not only were vagrants an affront to the morality of the dominant classes, but they also

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²¹ Whites were only occasionally arrested on charges of vagrancy. The Kelly brothers, for example, were found by the police with neither home nor employment. They were later discharged on the condition that they immediately found somewhere to live. The Record Books reveal that they had lived as "vagrants" for 13 months. 1/CT 6/16 28 September 1831, 25 October 1831.

²² The writer went on to suggest that "free blacks" should have a registered domicile and give 3 months notice of intention to leave employment. Both of these ideas would have effectively curtailed the liberties of the individual and substantially increased the power of the employer.
ZA 7 February 1834 letter to editor.

set a bad example to the Khoi and blacks. The Gardens' memorialists were concerned that their servants would be lured away by the superficial attractions of a vagrant lifestyle²³.

Vagrants were thus vilified by all and sundry and became scapegoats for the recent burglaries in and around Cape Town. The police department also came in for heavy criticism as it was felt that it did not adequately deal with the situation. In 1834 a contributor to the ZA lamented the abolition of the Burgher Senate, as prior to 1828 policing in Cape Town had been far more efficient. Combining both administrative and policing functions, one of the wardmasters' duties had been to keep a watchful eye open for strangers and report their whereabouts to the police. The writer believed that the wardmasters would have readily identified vagrants and thieves and the phenomenon of deserted slaves taking refuge in Cape Town for well over twelve months would have been quite simply unheard of²⁴. Since an immigrant police force would not have been able to identify strangers, this criticism was not perhaps totally groundless. There were plenty of other Capetonians who shared this sense of frustration and disappointment with the incompetent and grossly inefficient police.

Not all Capetonians lent their support to the proposed vagrancy legislation. 44 memorialists from Cape Town and

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LCA Vol 6 18 July 1834 Memorial of proprietors and inhabitants of the Gardens, Cape Town.

²⁴ ZA 21 February 1834 letter to editor.

Wynberg, including in their ranks some prominent businessmen, asked that a vagrancy law not be hastily adopted. Whilst not denying the need for protection from vagrants and beggars they did not feel this was the solution as a vagrancy ordinance was "at variance with the fundamental principles of the benign Constitution of British Law." More specifically their real objection was that a potential labour supply would be driven from the colony and seek refuge with blacks beyond the border. Individuals travelling within the colony in search of employment would not be able to prove that they were not vagrants per se and therefore this arbitrary power would impede the free movement of labour. Unlike most other colonists, these businessmen welcomed slave emancipation, as labour that had hitherto been monopolized would now be more freely available to the rest of the community. In accordance with laissez-faire principles, they further added that magistrates should not be empowered to fix wage scales for apprehended vagrants forced into employment, but that wages should be determined by free market forces²⁵. This attempt to "criminalize" a section of the population who had not really committed any "crime", was thwarted by the Colonial Office. It was ruled by the Supreme Court Judges that a vagrancy law was at variance with Ordinance 50 and could not therefore be permitted²⁶.

The withholding of assent by the Colonial Office was not a

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LCA Vol 6 Memorial of inhabitants of Wynberg and Cape Town 20 August 1834.

²⁶ LCA Vol 6 Opinions of the Supreme Court Judges. 5 August 1834.

simple matter of their succumbing to pressure from philanthropists like Dr Philip. Nor was this the response of a government solely committed to legal equality between races. The removal of legal disabilities firstly of Khoi and later of slaves was part of the movement from slave to wage labour²⁷. People were to be forced to work but not through the bonds of slavery²⁸. The preferred strategy was to stress the values of the dominant classes such as self-help and hard work. The freeing of the labour force was also a recognition of the need for a mobile labour force, the desirability of which some Capetonians had pointed out. Ironically it was this "free labour" that other memorialists feared would subvert the social order.

After this setback, support for vagrancy legislation diminished, although it never totally disappeared. In the 1840's the issue resurfaced once more, by which time Cape Town had experienced the consequences of a "free" population. It was clearly an experience that did not please a fairly large sector of the dominant classes, but the emphasis had now shifted more overtly to the question of labour discipline, which at its most fundamental level had also been the crux of the vagrancy topic.

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 Worden N 'Post Emancipation Labour in the Cape Town Hinterland 1838-1856.' p3. Unpublished paper presented to the 10th Biennial Conference of the South African Historical Society Cape Town January 1985.
- ²⁸ Ross R 'The Origins Of Capitalist Agriculture in the Cape Colony: A Survey' Unpublished paper p21 To be published in Beinart W, Delius P, Trapido S (eds) Putting a Plough to the Ground: Accumulation and Dispossession in Rural South Africa 1850-1930 (Forthcoming Johannesburg 1986).

In the post-emancipation period, the issue to be addressed was how the former slave owners were to retain control, and by what means.

With the final demise of slavery a large number of ex-slaves moved to Cape Town to escape the rigours of farm labour²⁹. The freed slaves already living in Cape Town could move out of their masters' premises and reside where they chose³⁰. This influx into and migration within Cape Town placed considerable strains on the housing situation, resulting in squalid conditions in some instances. It also placed stress on the policing system which the reform of 1840 only partly alleviated.

In 1839 the Cape Town magistrate demonstrated his willingness to support the employers when it came to solving labour disputes. The SACA carried an article entitled "Warning to Merchants and Labourers", reporting the case of 5 masons who were punished by the law for going on strike³¹. It was clearly emphasized that employees could not behave in this manner with impunity.

The Municipality also contributed to controlling the

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Hengherr 'Emancipation and After' p79. Worden 'Post Emancipation Labour' p10.

³⁰ Worden "Post Emancipation Labour" p11. District 12 was a particularly rapidly growing part of Cape Town (see Table 2). From an analysis of De Lima's 1848 Almanac it appears that a large proportion of the inhabitants could have been ex-slaves, although it is difficult to ascertain merely from their names.

³¹ The masons were fined 5 shillings each and had to forfeit a day's wages. SACA 11 September 1839.

population within Cape Town by drawing up a regulation which could be effectively used to deal with vagrants. The ambiguity of terms employed in the by-law meant that it could be a catch-all regulation to be used against a complete host of "offenders." The by-law read:

"No common prostitute, night walker or street-beggar shall be allowed to loiter or be in any thoroughfare or public place, for the purpose of prostitution or solicitation, to the annoyance of the inhabitants and passengers."³²

The thrust of the regulation appears to have been aimed at prostitutes, but an examination of the Court Record Books reveals that a few "loiterers" and "beggars" were also arrested³³. The municipal regulations made no references to vagrants, but it seems clear that the terms "vagrant" and "loiterer", whilst in reality not necessarily the same, for these purposes, were interchangeable.

The courts acting in an ad hoc manner together with the municipal regulations, however, could not between them adequately guarantee harmonious labour relations and sufficient power to the employer. As had been attempted with the vagrancy question, only this time successfully, the solution was to invoke the rule of law.

In 1841 the Masters' and Servants Ordinance came into

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³³ 1843 Almanac p64. Regulation No 25.

e.g. 17/CT 8/4 1844 case numbers 44 and 45.

4 individuals, who were described as "vagrants", were charged with loitering in the vicinity of "Jones' Dorp" - a notorious part of town. At least 2 of the persons appear to have been white.

operation for an experimental 3 year period³⁴. In practice its implementation was of a far more permanent nature. Based on similar legislation in England, employers and employees were obliged to enter into a mutually binding contract which inter alia stipulated the conditions and duration of employment. This contract was ostensibly to protect the employee, who had recourse to the law if the master did not meet his side of the bargain. The reality was that the employer was ensured of a more secure labour force than previously, since if the servant broke the contract, this was deemed a criminal offence. Misdemeanours on the part of the master were neither as broadly defined nor as severely punished³⁵. Despite the phraseology of the Ordinance which suggested an equality between master and servant, the master clearly had the law on his side. The lack of racial distinctions in the legal terminology also belied the reality since the masters were invariably white and their servants were not. Thus the class aspect of racial domination was preserved³⁶.

In the Cape Town Police Court a yearly average of some 86 cases of deserted and refractory servants were sentenced. This amounted to 5,8% of the total number of offences between 1840 and 1850 (see Table 3). Contrastingly, in 1848, the Cape Town Resident Magistrate reported that in the last 3 years there had

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34 Worden 'Post Emancipation Labour' p7.

35 Ross 'Origins of Capitalist Agriculture' p26.

36 Bundy C 'The Abolition of the Masters and Servants Act' in South African Labour Bulletin 2 1975 p38.

only been 43 cases of servants prosecuting their masters³⁷. The number of successful cases was likely to be even smaller. After the hysteria engendered by the question of labour control mechanisms, the figures for disobedient servants are perhaps surprisingly small. This is possibly explained by the fact that the law in itself acted as a deterrent to any would be "refractory" servants or quite simply that the master had unofficial means of controlling servants.

In 1848 a questionnaire was circulated by the Legislative Council to a variety of magistrates, ministers, Justices of the Peace and colonists³⁸. Its purpose was to solicit their opinions on the workings of the Masters and Servants Ordinance, following complaints that the law was inoperative³⁹. The general response was that existing legislation was too lenient on the servant and that stiffer laws were necessary. There was also considerable support for a vagrancy ordinance⁴⁰.

In the 1840's the colony was experiencing a serious labour shortage, as various attempts to bring labour from England illustrated⁴¹. Any efforts, therefore, to compel people to accept employment and to strictly control them once employed,

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LCA Vol 33 Replies to the Masters and Servants
38 Questionnaire by the Resident Magistrate of Cape Town 1848.
39 Marais Cape Coloured People p193.
These complaints were mostly made by farmers in outlying rural areas, who stated that due to the great distances involved, the magistrates were inaccessible. Worden 'Post Emancipation Labour' p9.
40 Marais Cape Coloured People p193.
41 Marais Cape Coloured People p194.

were likely to receive warm support. A contributor to the CTM on the subject of the late "yell for a vagrant law" described what he believed to be the driving motivation behind such a law:

"...to compel the coloured classes to accept such wages and treatment as their masters choose to give them. It is singular that nearly all the advocates of a vagrant law exclaim against the present high rate of wages"⁴².

The majority of respondents to the questionnaire were extremely supportive of stringent master - servant regulations and punitive measures against those who would not work. In Cape Town, which was by no means representative of the whole colony, opinion was more evenly divided, although still in favour of a vagrancy law. 5 of the 8 Capetonians consulted unequivocally backed the idea of legislation⁴³. Ex-Fiscaal Denyssen, for example, outlined a range of behavioural patterns and lifestyles which he believed should be considered as "vagrant." One such classification included "all persons found carrying packets or bundles in any public street or thoroughfare, without giving any satisfactory account of the same, during the time intervening between one hour after sunset and one hour before sunrise"⁴⁴. Clearly the legal enactment of this definition could have allowed for the arrest of all manner of suspicious persons, illustrating to what lengths some whites were prepared to go to gain control over labour⁴⁵.

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⁴² CTM 21 April 1849 letter to editor.

⁴³ CTM 28 April 1849 extract from CBB.

⁴⁴ CTM 17 April 1849 letter to editor.

⁴⁵ A contributor to the CTM believed that other Capetonians concurred with Denyssen's sweeping interpretations but dared not admit it so publicly. CTM 17 April 1849 letter to editor.

Denyssen went on to describe his scheme for the punishment of vagrants. He envisaged "the confinement of agricultural labour for a certain time in the service of respectable farmers making application for the same, especially at harvest time." The justification for this was the "high and unreasonable wages demanded by the labouring classes." This was obviously a major consideration as the implementation of his plan would have provided the farmers with free labour at critically busy times of the year. Other Cape Town respondents backed the idea of forcing vagrants to work, for either no wages or at a salary below the going rate⁴⁶.

On a more reasonable note, letter writer 'N' outlined his solution to rid the colony of both labour problems and vagrants. At present, the poor had very simple tastes and "wants" which did not necessitate the participation in employment, as many of their needs could be satisfied without. The remedy, therefore, was to inculcate more sophisticated tastes so that the individual would voluntarily offer his employment. He cited the example of the "coloureds" in Cape Town whose clothing, furniture, houses, standards of hygiene and education all testified to the success of moulding the "natives"⁴⁷.

Despite the prevailing feeling among the colonists of overwhelming support for a vagrancy law, the government did not,

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⁴⁷ CTM 28 April 1849 extract from CBB.
CTM 17 April 1849 letter to editor.

this time, attempt to satisfy their wishes. The passing of a vagrancy act had to wait until 1879, when the measure could be pushed through the Cape Parliament rather than the Colonial Office. In the interim another important measure came in the form of the 1856 Masters and Servants Act, which weighed even more heavily in the masters' favour⁴⁸.

The coercion of members of the under class into wage labour and the creation of legal controls over that labour force was critical in terms of the diversifying economy of the colony. This need was shared by Cape Town's ascendant commercial class and by farmers who perceived a loss in power over their labourers in the wake of emancipation. Where the Vagrancy Ordinance failed, the Masters and Servants legislation was eminently successful and guaranteed considerable leverage to the white employers over the white, black and Khoi under classes.

Closely linked to the vagrancy issue was the problem of theft. As it was popularly believed that the vast majority of vagrants, if not all, were 'criminals' (drunkards, prostitutes, disturbers of the peace, etc) the legally criminalizing of their itinerant and non-conformist lifestyle was barely even an issue. The vagrants' very existence posed a threat, not just to general law and order, but more specifically to the security of property. The general assumption was that if vagrants did not steal, they would not be able to provide for their basic needs.

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Ross 'Origins of Capitalist Agriculture' p26.

Vagrancy and theft were almost regarded as opposite sides of the same coin. Public concern over these two issues tended to be closely correlated and any panic regarding vagrants tended to be accompanied by heightened anxiety over property.

In England, theft and burglary were particularly sensitive issues in the late eighteenth and early nineteenth centuries. Contemporaries believed that capitalism and greater wealth presented abundant opportunities for fraud, embezzlement, forgery and theft and were thus responsible for the rising crime rate⁴⁹. The middle classes became increasingly concerned about the security of their property which appeared to be threatened by "dangerous classes" of the rapidly expanding urban areas. The belief in the existence of a "criminal class" living off the proceeds of crime, fuelled these fears⁵⁰. The anxiety felt about property was mirrored in the legal structure which, in the last decades of the eighteenth century saw the addition of a great number of capital offences dealing with theft and burglary⁵¹.

Security of property in Cape Town was also a crucial issue, especially as the mercantile potential of the city expanded

⁴⁹ Jones Crime pp10-11.

⁵⁰ Tobias Urban Crime pp52-77.

⁵¹ Counteracting this was the extensive use of the royal pardon, so that there were comparatively few executions. Hay D 'Property, Authority and the Criminal Law' in Hay et al Albion's Fatal Tree pp18, 22. Until 1833 housebreaking incurred the death penalty as did burglary until 1837. In practice, however, transportation was the usual punishment. Philips Crime and Authority pp241-248.

throughout the nineteenth century. The growth of both residential and business districts of Cape Town entailed the protection of a greater number and variety of more valuable premises. The Superintendent of Police freely admitted that the safeguarding of property was one of the policeman's key functions. The dense concentration of constables patrolling the town centre testified to this, even though this meant the neglect of the outlying and growing suburbs. The police appear to have been serving the needs of a small clique of wealthy businessmen rather than those of the whole community. Even this partiality was inefficient and was one of the considerations prompting the restructuring of the Department in 1840.

At sporadic intervals, concern regarding property deepened, of which a sudden burst of letters to the police or, more likely, to the local press, are the best indicators. In 1833, for example, while tension was mounting over the forthcoming slave emancipation and the vagrancy question, a contributor to the SACA gave his views on the recent rash of burglaries:

"...success has emboldened the depredators and they now carry on their operations⁵² with a daring quite unprecedented in this colony."

A writer to the ZA in the following year demanded to know when a more efficient policing system would be established, as 10 houses had been broken into in the space of 3 weeks and the perpetrators were not yet discovered⁵³. The strong likelihood

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⁵³ SACA 1 June 1833 letter to the editor.

ZA 24 October 1843 letter to the editor.

of impunity clearly encouraged the thieves.

In frustration, private individuals sometimes took matters into their own hands by offering rewards for information relating to certain crimes⁵⁴, the rationale being that if the public would not voluntarily co-operate with the police, the inducement of financial gain would perhaps change their minds. The system of rewards, however, was by no means a simple solution to the issue of theft, as the question arose of whether a policeman could receive such a reward. An 1829 SACA editorial pointed out that the allure of a reward might have the effect of exacerbating the situation. The constable could ignore offences until a reward was offered, or even deliberately allow the thief to continue his operations unmolested, so that the reward mounted. When the reward reached a satisfactory size, the constable could then arrest the thief and promptly collect a substantial sum of money. The SACA, an effective mouthpiece for propertied interests, suggested that to counteract this possibility, the watchman, on whose beat the crime had been perpetrated should be either fined or dismissed⁵⁵. This rather harsh remedy illustrates not only an impatience with the inefficient police and nightwatch, but also the lengths to which the property-owners would go to defend their possessions.

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For example, a Mr Collison, a notable wine merchant, offered a 100 rixdollar reward for information regarding the burglary of his store. SACA 28 October 1829. There are many cases similar to this one.

⁵⁵ SACA 28 October 1826 editorial.

To an even greater extent than the police, the nightwatch was the object of quite scathing public criticism. In 1826, for example, the SACA carried an editorial on the subject of the totally inept state of the nightwatch, explaining how this was responsible for the recent burglaries. It was revealed that the nightwatchmen did not patrol individually, but in pairs which meant that a far smaller area was covered, "leaving the greater part of every street unprotected"⁵⁶. This procedure of patrolling in pairs was undoubtedly an attempt to counteract the problem of attacks on lone patrolmen, but the need for protection clearly impaired their efficiency. The problem of burglaries did not significantly abate even after the 1840 police reform, and the police continued to bear the brunt of public hostility. A letter writer in 1843, who obviously had little faith in police efficiency, suggested that property owners keep guard dogs⁵⁷. Judging by the indignant response of memorialists in 1849, at the Municipality's proposal to levy a tax on all dogs, the practice of keeping guard dogs was fairly widespread. Memorialists argued that their dogs were not a luxury, but a necessity due to the threat of burglaries⁵⁸.

Tackling the problem from another angle was the introduction in 1846 of a system of streetlighting by the Municipality. The municipal wardmasters belonged predominantly to the class of

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⁵⁶ SACA 4 July 1826 editorial.

⁵⁷ ZA 7 July 1843 letter to editor.

⁵⁸ 3/CT 1/1/5/34 5 February 1849 memorial from 52 inhabitants to municipality. They instead proposed that a tax be levied on goats, which were kept mostly by "Malays" for their entertainment.

tradesmen and the commissioners to the rising commercial class⁵⁹. Both groups clearly shared an interest in the security of property, and it is hardly surprising therefore, to find them using the municipal government as a vehicle to promote their own interests. Of course the municipal personnel did not derive exclusive benefits, since streetlighting presumably facilitated the task of the policemen and thus ensured more general safety. It appears, however, that the positioning of street lamps was by no means even, and like the policemen were concentrated in the town centre, where the more valuable property was also located⁶⁰. Again, it was a question of priorities, and money together with political influence clearly had the desired effect.

Although the public readily blamed the police for insecurity in Cape Town, the property holders themselves were not entirely inculpable. The Police Reports (from 1840), clearly identified the number of unlocked premises. For any 6 months period, this figure was in the region of 200 - averaging at least one property every night. In the 6 months from January 1850 a staggering 410 premises were found with either windows or doors improperly secured⁶¹. The police may well have wondered how they could be held responsible for the consequences of other

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⁵⁹ Warren 'Merchants, Commissioners and Wardmasters' pp73-74.

⁶⁰ Even this system of streetlighting was of limited value as the gas lamps were extinguished at 12 o'clock, and moreover a determined thief was not likely to be thus deterred
3/CT 1/1/5/22 18 May 1846 letter to the Municipality on streetlighting.

⁶¹ CO 598 Police Report 13 July 1850.

peoples' carelessness.

Whilst burglary periodically generated a great deal of concern, it was petty theft that was the more pervasive problem, and claimed a larger number of victims. From 1840 petty theft accounted for an average 7,6% of the total incidence of offences, which was the third largest category of "criminal" activity for which offenders were sentenced (see Table 3). As was the case with most "crimes" the true number of petty thefts was in fact likely to be much higher, but was probably substantially under reported. Unless the victim had a suspicion of who had committed the offence, and could provide the police with a lead, the futility of simply going to the authorities may have induced some legitimate victims to keep silent. This was especially likely to be the case in large towns where the chances of recovering the stolen goods without some information to go on were probably slim. Even if the goods were found by the police, the victim may have had more interest in reclaiming his rightful possessions than pressing charges⁶².

Petty theft was a typically urban crime, largely due to the opportunities and the relative anonymity offered by towns. In an attempt to remedy this, the authorities, keenly aware of the problem, endowed the reformed police in 1840 with far-reaching powers. Section 19 of the Police Ordinance empowered the police

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Philips makes this observation with reference to the Black Country, but it is equally applicable to Cape Town. Philips Crime and Authority pp196-197.

constables to stop persons carrying any bundle or parcel under suspicious circumstances. Further "if there shall be reasonable grounds for suspecting that such goods or articles have been criminally procured", the suspects were to be taken to the police station. This clearly placed great discretionary power in the hands of the policeman.

In the first eight months after the introduction of the "new police" the constables utilized this recently acquired power to the full when a total of 62 "reputed thieves and suspected persons" were taken into custody. 40 of these (i.e. 65%) were released by the magistrate⁶³. There were probably well over 62 "suspicious" persons in the whole of Cape Town (depending upon the interpretation of the term) but if there were no legal charges against the person, it would have contributed to the feeling that the police were interfering and overbearing. Until the late 1840's a large proportion of "suspects" were released, but thereafter this discriminatory power appears to have been used with more caution⁶⁴. The police clearly had to learn, at the expense of their victims, how to best use this authority vested in them.

Within the police department, however, it was felt that even these fairly comprehensive "stop and search laws" were not

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The average rate of acquittals and discharges over the 10 year period from 1840 was approximately 18%.

⁶⁴ The rate of release remained above average, but more in keeping with that of other offences than the initial experimentation with this power had shown.

sufficient to deal with the problem of theft. In 1841 Inspector King, aware of the prevalence of theft and probably very sensitive to the criticisms being levelled at the police, requested that the Attorney-General frame an ordinance to allow the police "to punish reputed thieves taken up under suspicious circumstances"⁶⁵. The difference was that the suspected person no longer had to be carrying something that was possibly stolen, but only to look suspicious.

Attorney-General Porter responded that despite the existence of such laws in London, where there were far more thieves than Cape Town, that "measures may be necessary in the one place which might savour of oppression in the other"⁶⁶. Police power was obviously to be kept within well defined limits, as the authorities usually recognized the vast differences (i.e. largely of scale) between Cape Town and London.

The Court Record Books together with the detailed Police Reports on theft that were kept from 1843 to 1846, provide indications of what sort of items were stolen (see Table 5). The largest categories of stolen items were food (21%) clothing (18%) household goods (16%) and various quantities of cash (14%). Less frequently, amounts of alcohol, livestock, wood, jewellery, tools, tobacco and handkerchiefs were also illegally

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King also desired the authority to compel those "suspects" to work, as was the case in London, where magistrates could send suspicious persons to a period on the treadmill for a maximum of 3 months. CO 502 12 January 1841 Report of Inspector King.

⁶⁶ AG 2616 7 April 1841 Porter to de Lorentz.

TABLE 5 THEFT 1843 - 1846

STOLEN ITEM	NO OF CASES	% OF TOTAL
FOOD	64	21,2
CLOTHING	55	18,2
HOUSEHOLD GOODS	47	15,6
MONEY	43	14,2
MISCELLANEOUS	33	10,9
HANDKERCHIEFS	13	4,3
ALCOHOL	11	3,6
LIVESTOCK	10	3,3
WOOD	9	3,0
JEWELLERY	8	2,6
TOOLS	5	1,7
TOBACCO	4	1,3
TOTAL	<u>302</u>	

42,1% of the offences were committed by either servants or other employees and 8,9% by lodgers. 11,4% were committed in shops, 10% in gardens and 6,1% from canteens and brothels. 3,6% of the thefts were from drunkards and another 1,4% from sober persons, usually children. 6,4% were caught in the act by the police. The remaining 5,2% of offences occurred at various venues such as boats, washing places and waste areas.

Based on biannual Police Reports to the Colonial Office between 1843 and 1846 - CO 535, 545, 562.

procured⁶⁷. In three years the total value of all the goods amounted to £170 17s 8d. The average amount of stolen cash was approximately £2 and the value of other items roughly 6s 6d. Thus it is clear that apart from the instances of cash and the odd case of jewellery, the stolen items were predominantly of very low value⁶⁸.

Venues of the theft were extremely varied. 42% of all offences were committed by a servant or employee, which probably meant that the offence occurred at the place of employment (house, shop etc) or whilst the employer was on an errand. Two examples illustrate this point. The case of the slave, Carolina was fairly typical, who while shopping for her mistress acquired three pairs of shoes for herself by fraudulently using her mistress's name to obtain credit⁶⁹. The case of William Stevens demonstrates a similar, albeit slightly more sophisticated strategy. He obtained alcohol and £9 in cash by producing a note, supposedly from 2 merchants entitling him to goods or cash on production of the letter. It transpired that

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The analysis of stolen goods in Cape Town closely corresponds to that done by Rude on early nineteenth century Sussex viz food 23,3%, clothing 21,2%, money and jewellery 15,5%, household goods 12,4%, building materials 5,9%, tools 5,8%, animals and animal feed 4,4%. As in Cape Town the thefts were predominantly perpetrated by servants and labourers i.e. 89,2%. In more industrialized regions of England, especially London, Rude reveals a quite different analysis of theft. Rude G Criminal and Victim: Crime and Society in Early Nineteenth-Century England (Oxford 1985) pp11, 18, 26, 33-36, 42.

⁶⁸ Philips' study of theft in the Black Country reveals a similar sort of picture.

⁶⁹ Philips Crime and Authority pp178-204.

1/CT 6/15 3 November 1829 Case of Carolina.

the note was not written by the merchants and nor was Stevens in their employ⁷⁰. The ease with which both of these offences appear to have been committed raises questions about the availability of credit facilities and the degree of trust (obviously misplaced in some instances) that existed between tradesmen and members of the public. Business transactions of this petty nature seem to have been carried out in a fairly casual manner, which paved the way for abuse by a small criminal minority.

Other venues included stores where merchandise on display either within or outside the shop could be easily pilfered while the storekeeper's attention was diverted. Gardens were also fairly easy picking grounds, where fruit, vegetables and even livestock could be obtained, and the only obstacle was probably a garden wall⁷¹. Other likely targets were lodging houses, to which the lodgers obviously had ready access. Occasionally drunkards or customers in brothels became victims, but these cases were likely to be unreported, largely due to either the embarrassment or loss of memory.

Generally the offences were committed by those who had ready access to the deserted goods - predominantly servants, employees, slaves, shop assistants and lodgers. The crimes appear to have been opportunist, rather than premeditated and the

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⁷⁰ 1/CT 6/17 22 October 1833 Case of W Stevens.

⁷¹ See above p 99 and the complaints made by inhabitants of the Gardens regarding theft from their gardens.

criminals themselves rather amateurish. Contrastingly in 1843 a "daring" housebreaking was perpetrated, by the removal of locks and security bars. The mastermind behind this deed was not native-born but originated from London. The SACA was extremely concerned about the possible consequences of imprisoning this Londoner with the "rustic delinquents on Robben Island". The editorial went on to describe the "native Cape rogues" in the following manner:

"They are in general clumsy and even stupid. But there is probably no want of latent talent, and a few clever professors like the case referred to, might soon raise up a body of midnight depredators, for whose operations the inhabitants, confident in long security, are but ill-prepared."⁷²

This description highlights the popular prejudices regarding prisons being nurseries of crime and the more damaging belief that the Cape "natives" were by their very nature, let alone with encouragement, inclined to crime.

The readiness of potential thieves to seize opportunities as they presented themselves is illustrated by the two following examples. David, a "free coloured", was caught stealing three sausages from a butcher shop. The sausages were found hidden in his hat⁷³. Betje Griet, a rather notorious female "Hottentot" was arrested for thieving 2,5d. The money was found in her mouth⁷⁴.

Occasional instances of fraud and forgery testify to a

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⁷² SACA 8 November 1843 editorial.

⁷³ 1/CT 6/15 22 October 1829 Case of David.

⁷⁴ 1/CT 6/15 30 October 1829 Case of Betje Griet.

growing tendency to a degree of careful planning and more skilled crime, as did the infrequent use of skeleton keys⁷⁵. The diversifying local economy, with Cape Town's expanding business potential undoubtedly offered greater opportunities for fraud. Fraud also usually involved a degree of literacy, suggesting that the malefactor was of a slightly different socio-economic background than the average criminal.

Only one example has been discovered which points unequivocally to planning. A certain Mrs Gass, pretending to be a stranger in town, asked to be directed to a lodging house. Whilst an unsuspecting boatman was showing her the way, he was attacked by 9 men and robbed of 10s 5d. It transpired that Mrs Gass was in fact no stranger to Cape Town, as she kept a canteen, and the 9 men who carried out the attack were in league with her, whilst she acted as a decoy⁷⁶.

Motives are difficult to ascertain with any degree of certainty. The attitudes of the criminals themselves remain inaccessible largely because the Police Court, which dealt with petty theft, kept no records of proceedings. Speculation, however, based on the findings of English studies, helps illuminate the issue.

In many instances theft was almost definitely necessitous.

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An example of forgery is that of two men who made half-crowns from pennies with the use of quicksilver.
76 1/CT 6/19 20 July 1830 Case of J Ryan and H Irvin.
1/CT 6/20 11 January 1834 Case of Mrs Gass.

Poverty among Capetonians, including a sizeable minority of whites, was fairly extensive. Judges presents a very vivid picture of the extent and nature of the poverty and pauperism in the 1830's. By no means all persons below a certain standard of living were thieves, but poor wages and below-average living conditions, especially at the time of an economic recession, probably prompted "casual criminality"⁷⁷. Unfortunately little is known about the fluctuations of Cape Town's economy, and the crime figures are so incomplete that to attempt a juxtaposition of the two, as has been done in English case studies, is virtually impossible. The nature of stolen items, however, suggest that in many instances theft was a means of procuring the bare essentials for those who lived on or below the poverty line.

In England contemporary magistrates and police believed that the thieves were unwittingly aided by individuals who left temptations in the way of persons who may have otherwise have remained honest⁷⁸. In Cape Town similar sentiments were echoed in a statement by one of the Supreme Court judges. He was extremely critical of those who unknowingly abetted thieves by leaving valuables exposed and cash tills open. Those who tempted fate in this manner, he believed, were as deplorable as

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The point regarding the correlation between economic fluctuations and "casual criminality" is made, among others, by Gatrell in his study of theft in Victorian England. Gatrell V A C 'The decline of theft and violence in Victorian and Edwardian England' in Gatrell et al Crime and the Law p265.

⁷⁸ Jones Crime p13.

the thieves⁷⁹. Borchers, Cape Town's Resident Magistrate, shared these views. In 1834 he recommended that a man who had stolen a watch should be treated leniently since he had not only been drunk whilst committing the offence, but the watch had been enticingly left in a prominent position⁸⁰. Ultimate individual responsibility under such circumstances became a lesser consideration.

A further factor which indirectly fostered theft was the existence of receivers of stolen goods. This meant that the thieves were not only in a position to steal for their own immediate needs, but that crime could be turned to a profit. It was a widely-held contention by English middle-class contemporaries that a criminal underworld existed, living off the proceeds of crime, particularly in large cities⁸¹. Receivers of stolen goods were an indispensable part of this network, which threatened to subvert the social order.

In Cape Town figures for this offence varied quite considerably, but in toto for a ten year period from 1840 only accounted for 0,2% of the total offences. It is unclear what had to be proved in Court to secure a conviction, but in England it had to be shown that the receiver knew the goods to be stolen. This stipulation led to many acquittals⁸². It is

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⁷⁹ SACA 21 April 1841 editorial.

⁸⁰ 1/CT 14/13 22 March 1834 Borchers to Colonial Secretary.

⁸¹ Gatrell 'Decline of Theft and Violence' p265.

⁸² Philips Crime and Authority pp219, 222.

extremely likely that a similar situation existed in the Cape Colony, which would explain the very small number of convictions. It was popularly believed that "low drinking houses" acted as receivers, where the stolen goods were exchanged for alcohol⁸³, but this was probably based on prejudices regarding canteens rather than any concrete evidence. More daring thieves dispensed with the middleman and tried a more straightforward approach. One case was discovered of a thief attempting to resell a stolen teapot to the rightful owner⁸⁴.

According to the Police Theft Reports (1843 - 1846) just under one half of the value of the stolen goods was recovered. Since very few offenders were caught red-handed by the police (only 6,4%) this suggests that the thief was either known to the victim or that the police had fairly efficient methods of discovering stolen items. If the latter were true, the police may have had knowledge of receivers but without having had the

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SACA 5 November 1834, 9 February 1848.

ZA 17 October 1834 letter to editor

SACA 27 May 1840 editorial. Successive liquor ordinances forbade the pawning of goods for alcohol and made the licensee liable to a maximum fine of £10. Owing to the difficulties of detection, no such cases appear in the Court Record Books, although the offence probably was committed. Ross writes of the eighteenth century that the Chinese acted as an almost impenetrable network of receivers.

Sailors also had ample opportunity to remove stolen goods from the Colony and never be traced. Ross R 'The Rule of Law at the Cape of Good Hope in the Eighteenth Century' in Journal of Imperial and Commonwealth History 9(1) 1980 p14.

⁸⁴ ZA 25 September 1840 letter to editor.

necessary proof for prosecution⁸⁵.

Despite fears of the existence of a criminal class, little evidence has been discovered to substantiate this notion. There were certainly those who at times availed themselves of the opportunities for theft as a means of alleviating an otherwise impoverished lifestyle, but this was not the same as solely living from the proceeds of crime. A few references have been located, however which do specifically refer to "gangs" who probably lived by theft.

In 1825 an Ordinance was issued "For the more effectual apprehension of Deserted Convicts and Gangs of Vagrants"⁸⁶. Again the proposed link between vagrancy and a life of crime is emphasized. The Ordinance specifically referred to gangs of escaped convicts, slaves and "Hottentots" who lived by burgling houses and stores. Apparently the fear of being captured had made these men desperate and therefore the police were empowered to shoot at (although not deliberately to kill) members of such gangs.

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From an analysis of the Police Reports it is striking that this category of offenders had an above average level of education and included the largest proportion of women. The ratio of males to females was roughly 3:1, while for other offences men were more predominant. The education figures reveal that 68% of offenders were illiterate and 24% barely literate, testifying to a slightly higher standard of education than for other crimes.

Philips' study of the Black Country reveals a similar ratio of males to females, which he accounts for by the unimportance of physical strength needed for this crime.

⁸⁶ Philips Crime and Authority p147.

A reward of 50 rixdollars was placed on the head of every gang member. Ordinance 9 1825.

A year after the promulgation of this Ordinance, a "gang" of 13 slaves and free blacks were apprehended by the police and charged with various counts of burglary and receiving stolen goods. It appears they had neither fixed abode, nor employment and simply came into Cape Town to steal⁸⁷.

In 1834, at the height of the excitement regarding the proposed Vagrancy Ordinance, the Attorney-General, Oliphant, also referred to a gang. In response to a memorial from a slave, pleading for her son, Oliphant wrote that he was one of four "very bad boys" who were convicted of three separate housebreakings. They "formed a gang similar to such as exist in London; they slept in casks in the square in front of the Barracks and had no visible means of subsistence but thieving"⁸⁸. Despite the very small size of this "gang", their non-conformist and "criminal" lifestyle meant that they were shown no mercy by the Attorney-General

There were undoubtedly other such "gangs" operating in or more likely on the outskirts of Cape Town, but on the whole, theft appears to have shown relatively little signs of being organised or of pointing to the existence of a "criminal class". There was no clear distinction between the "ordinary" poor and the "criminal" poor, as thieves merely seized opportunities as they presented themselves, and as their own

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⁸⁷ SACA 31 October 1826.

⁸⁸ AG 2613 15 February 1834 Oliphant to Colonial Secretary.

particular circumstances dictated.

Essentially the issues of vagrancy and theft presented the dominant classes with problems of control and discipline. Despite the fact that vagrancy was not a legally defined crime, vagrants and thieves were regarded as inseparable components of a lifestyle that threatened not only the morality of the dominant classes, but probably more importantly also their property. The somewhat hysterical commentary made by the white dominant classes in the 1830's and 1840's regarding vagrancy, as Cape Town made the transition from slave to wage labour and adjusted to a "free" society, was a fairly typical response to a change that was perceived as upsetting the status quo and diminishing their power. The concern regarding security of property and vagrancy illustrates clearly the manner in which the dominant classes believed that legislation should be a reflection of their ideology and morality. It should be manipulated to bolster their power and should enable them to effectively extend control over the potentially challenging under classes.

CHAPTER IV

LEISURE, LIQUOR AND SOCIAL CONTROL

A serious study of leisure and liquor rather than an antiquarian approach, together with an issue of how the consumption of alcohol became criminalized, is closely linked to the debate that has raged over the concept of social control. The term has recently been reviewed, largely due to the confusion caused by its usage in an often vague and imprecise manner¹. Currently stressed in studies of nineteenth-century Britain is the class content of the process since, in effect, it entailed the "reformation of one class by another" or the shaping of a working class from above². This meant that leisure activities were to be channelled into pursuits that did not in any way threaten the social order. Middle classes wishing to mould a working class in their own image thus stressed the need for "rational recreation"³. Elements of competition, points of conflict and resistance cannot, however, be overlooked. It should not be assumed that the desired "control" was something static or even obtainable without a

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1 e.g. Yeo E & S 'Ways of seeing: Control and Leisure versus Class and Struggle' in Yeo E & S (eds) Popular Culture and Class Conflict 1590-1914 (Brighton 1981) pp128-154.
2 Jones Stedman G Languages of class: Studies in English Working Class History 1832-1982 (Cambridge 1983) pp76-89.
3 Yeo 'Ways of Seeing' pp137-138.
See e.g. Bailey P Leisure and Class in Victorian England: Rational Recreation and the Contest for Control 1830-1885 (London 1978) passim esp chapter II.

struggle of some description. As the Yeos write, "To assume a uniformity or a totality of control, or even a single direction of control (from the top downward) is to neglect the frontiers on which power is contested"⁴. The existence and importance of "struggle" is also emphasized by Stedman Jones who further points out that the resistance of the subculture is unfortunately often difficult to ascertain, since the sentiments, responses and even behaviour of the masses is usually unrecorded. (At best they are usually only described from a middle-class viewpoint). Stedman Jones, like the Yeos stresses that the "temptation to translate archival silence into historical passivity" must be avoided or the resulting analysis will be presented as a simple one-sided class struggle (i.e. middle class initiatives and victories, and a compliant working class)⁵.

The term "social control" has been specifically employed to understand conflict outside the work place in nineteenth century capitalist Britain. As Bailey writes "Leisure time was one of the major frontiers of social change in the nineteenth century, and like most frontiers, it was disputed territory"⁶. It is also a useful tool in analysing leisure in Cape Town since, in this period the slave-master relationship was being replaced by that of employer and employee. The very crude control exerted by slave owners over their "possessions" was substituted by

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5 Yeo 'Ways of Seeing' p132.

6 Stedman Jones Languages of Class pp77-78.

6 Bailey 'Leisure and Class' p5

something a little more sophisticated.

The Cape Colony in the first half of the nineteenth century was undergoing fundamental social changes, with the result that the situation was quite unparalleled and could hardly be compared with any other society of its era. The cumulative effects of ordinance 50 and slave emancipation were perceived by the vast majority of colonists as completely upsetting the status quo⁷. In theory, at least, these measures signified that ex-slaves and Khoi were to have no legal disabilities and were therefore placed on equal footing with the whites. Since approximately half Cape Town's population consisted of blacks and Khoi, the threat to social stability was regarded as very immediate and very real. The need for discipline and control over this ascendant and growing proletariat appeared critical. This was especially true as neither employers nor slave owners were any longer in a position to maintain surveillance outside the work environment⁸.

This unique set of social relations meant that any cultural hegemony over such a heterogeneous population (i.e. in terms of race, ethnicity and culture) was intensely problematic. The resulting social control mechanisms utilized in Cape Town tended to be more iron-fisted than velvet-gloved. In the ensuing contest for the imposition and maintenance of control over a

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⁷ See above Chapter III and fears about vagrancy and theft.
⁸ See above Chapter I and the problems that the growth of Cape Town coupled with the freedom of choice for free Khoi and ex-slaves to live where they liked presented to the police and the system of patrolling.

large sector of Capetonians' leisure pursuits, therefore, the police backed by the legal machinery, were to play a pivotal role⁹.

Cape Town's police reports from 1840 onwards reveal that cases involving a "criminal" use of liquor (i.e. drunkenness, drunk and disorderliness and disturbing the peace) accounted for 55% of the total number of offences over a ten year period¹⁰. (See Table 3). A report written by Inspector King in 1841 suggests that the true incidence of drunkenness was in fact far higher, but that a large proportion of offenders could not be convicted. King observed:

"That as the law now stands, it is impossible for the police to keep the streets clear of drunkards, as the magistrate has no power to punish unless it shall be made to appear that the person was actually found lying down drunk, or from the effects thereof, whereas in London the constable has only to prove a person to have staggered about the streets and incapable of taking care of himself"¹¹.

As King so astutely realised, the public had far more reason to fear a drunk who could still walk than one who was harmlessly sleeping off the effects of alcohol. This is another

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For the role of other police forces see, for example, Storch 'The Policeman as Domestic Missionary' 1976 pp481-509. It should be remembered, however, as Stedman Jones states, that the ultimate social control mechanism is the wage relationship itself. To a large extent leisure hours and the nature of an individual's recreational pursuits are determined by salary, and thus the need for an individual to continually resell his labour ensures a great deal of control within the capitalist system. Stedman Jones Languages of Class p87.

¹⁰ The incidence of drunkenness etc prior to 1840 was probably equally high, but is difficult to quantify owing to the very incomplete nature of the court records.

¹¹ CO 502 9 July 1841 Report of Inspector King

interesting example of the London police being given more leeway and wider-reaching power than their Cape Town counterparts. The rationale here is unclear, unless it was simply that contrary to public opinion, the dimensions of Cape Town's drunkenness problem were relatively more manageable. Given the vast discrepancies in size between the two capitals this was likely to be the case, which meant that the attitudes of those like King (who had started his career in London) did not reflect a realistic appraisal of the situation. Popular misconceptions however, are as revealing as the actuality.

For the sale of wine and to a lesser degree brandy and beer, Cape Town offered a considerable variety of canteens, inns and taverns. In 1825 the Government Gazette recorded the issuing of nearly 60 licences for liquor outlets¹². Business was obviously booming since by 1840 the number had risen to 71¹³. By 1848 the ZA reported that Cape Town housed more than 100 drinking haunts¹⁴. Thus in just over 20 years the number of drinking venues had nearly doubled. An analysis of de Lima's 1848 Almanac shows that there were relatively few canteens situated in the central business area (i.e. between strand and Wale Streets and the Heerengracht (Adderley St) and the Buitengracht) but were concentrated towards the town

¹² GG 1 & 22 January 1825, 5 & 12 February 1825.

¹³ GG 7 & 14 February 1840.

¹⁴ ZA 17 April 1848 editorial. The main reason for this dramatic increase was the reduction of the licence fee in 1845 from £112 10s to only £20. See below

perimeters¹⁵. This was particularly the case in Districts 6 (Wale St toward Table Mountain), 2 (Strand St toward the sea), 9 and 10 (around Caledon Square and the Barracks) (see map). Virtually whatever the neighbourhood, a drinking place of some description was within easy reach

There appear to have been few alternative venues for the daily recreation of the average worker. Since housing was often overcrowded¹⁶, entertaining at home was out of the question, especially for a very large number of slaves, servants and apprentices who were often obliged to live with their masters. Cape Town also played host to a sizeable number of visitors, in the form of soldiers and sailors who were ready custom for canteens¹⁷. Liquor outlets, therefore, acted as necessary focal points, and played a vital social role within the community.

Quite apart from the intoxicating effects of alcohol and its importance at social occasions, it was suggested by British contemporaries that liquor in its various forms imparted energy and physical stamina¹⁸. Others believed that the consumption of beer, in particular was an assertion of virility¹⁹. For

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De Lima's Almanac 1848 pp81-260

It was these areas that also occasionally complained of the absence of a police patrol. See above Chapter I.

16 Judges 'Poverty' p70-84.

17 To a lesser extent, visitors from Cape Town's hinterland to her various markets may also have frequented the canteens on their trips into town.

18 Harrison B Drink and the Victorians: The Temperance Question in England 1815-1872 (London 1971) p39

19 Harrison Drink and the Victorians p40

practical purposes, viewed purely as a liquid refreshment, alcohol was both cheaper and more readily available than other beverages²⁰. The consumption of alcohol, therefore, either in moderation or to excess, from necessity or pleasure, was probably habitual for a large section of Cape Town's population. Alcohol thus constituted an integral part of popular culture.

This habit was, however, the cause of serious misgivings and alarm among the upper strata of society. Like England Cape Town had its share of concerned members of the public. The local newspapers abounded with a variety of anxious, irate, disapproving and frustrated letters from local residents, invariably adopting a highly moralizing tone. Editorials, too, poured forth on the evils of liquor. A SACA editorial of 1832 stated "The Hospitals, Jails, Whipping Posts and Gibbets throughout the whole Colony are unanimous in making this declaration - 'But for the invisible spirit of wine, we would soon cease to afflict the eyes of society'." ²¹

The believed connection between alcohol, poverty and crime was even more explicit in this letter to the SACA in 1834, suggesting that the signboard outside canteens should read

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Judges explains that tea and coffee were financially beyond reach of the average worker and, moreover, difficult to prepare. Water was often medically unsafe and could also be difficult to procure. Cape Town in the 1830's had some 63 water pumps but residents continually complained of the difficulties of obtaining water.

²¹ Judges 'Poverty' pp63-66, 102-103.
SACA 11 January 1832 editorial.

"Retailer of Pauperism, Crime, Sickness, Insanity and Death for sixpence a bottle"²². An editorial concerned with public health also highlighted the common association between drunkenness and crime and interestingly also equated being intoxicated with the transmission of disease:

"In this way the mass of drunkards which our canteens nightly vomit forth, deforming our streets and endangering our property by robbery and fire, or threatening the persons of the inhabitants with bayonets and knives, become doubly detestable as the conductors of contagion"²³.

The ZA, effective mouthpiece of the farming interest, outlined the damaging effects of alcohol on the labour force. It was argued that, lured away by the attraction of liquor, the labour supply became intermittent and the employer inevitably suffered. Referring mainly to the agricultural labourer the ZA commented: "by his licentious and disorderly conduct, he deprives himself of proper employment and the fruits of a sober life - he robs society of the labour of his hands and at last plunges himself into perdition"²⁴. The focus of concern here was the plight of the employer rather than employee - the need for labour being the crux of the matter.

Moodie, an early British settler, voiced a prevalent attitude among the Colonial dominant classes when he wrote that "Drunkenness is the besetting sin of the lower classes in all our colonies, and at the Cape few of the working people escape

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²² SACA 10 December 1834 letter to editor.

²³ SACA 17 March 1832 editorial.

²⁴ ZA 17 April 1848 editorial.

falling into this ruinous habit"²⁵. Drunkenness was not confined to the lower orders as was so popularly believed. Double standards were operative, as behaviour tolerated among the wealthy was definitely unacceptable among the poor. Even the Supreme Court judges were described as "notable bottle men", but since their intoxication was in the privacy of their own houses, they were regarded almost indulgently rather than with disapproval²⁶.

The drinking places themselves naturally came in for a great deal of scathing criticism. The description of beer houses as venues "where riot and debauchery, inebriation and swearing, idleness and cruelty assail the ears and pain the eyes of the passenger at every hour of the day and night" was fairly typical²⁷.

It was also widely suspected that the proprietors of these "vile receptacles" acted as receivers of stolen goods. It was alleged that drinking-house keepers even went as far as encouraging servants to steal and then profited by exchanging their loot for liquor²⁸. One writer suggested that immediately a robbery occurred, the police should check the canteens, since that was where the thief was most likely to

²⁵ -----
Moodie J W D Ten years in South Africa (London 1835)
Vol 1 p53.

²⁶ Hattersley A F: A Victorian Lady at the Cape (Lucy Gray)
1849-1851 (Cape Town 1951) p27.

²⁷ SACA 5 November 1834 letter to editor.

²⁸ SACA 9 February 1848 letter to editor.

head²⁹. It is difficult to ascertain to what extent these suspicions were well-founded or simple prejudices, especially in the context of contemporary fears regarding property, but whatever the case are telling examples of how canteen keepers were regarded.

It was the duty of the police, therefore, to keep a watchful eye on Cape Town's multitudinous drinking haunts and clear the streets of drunk and disorderly elements. One contributor to the SACA even went as far as suggesting that the sole task of the police should be to attend to drunkards³⁰. The unprofessionalism of the police constables, however, meant that they were more likely to succumb to the temptations of alcohol than to actively combat the problem. Inebriation among the policemen was one of de Lorentz' most common complaints, since, on occasion, they were totally incapable of performing their duties³¹.

Drunkenness was exacerbated by the existence of so-called smuggling houses - unlicensed liquor outlets. Resident Magistrate Borchers felt that the dimensions of the smuggling problem were completely under-estimated, and although perhaps deliberately overstating the case to prompt action, he calculated the existence of some 300 smuggling houses³². They

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²⁹ SACA 5 November 1834 letter to editor.

³⁰ SACA 15 May 1839 letter to editor.

³¹ See above Chapter I.

³² 1/CT 14/13 14 October 1842 Resident Magistrate to Colonial Secretary.

were believed to be distributed throughout Cape Town , but particularly concentrated in the upper reaches of town³³ and in the region of the Barracks³⁴, both of which were densely populated, predominantly poor areas, and also where a great number of drunkards were arrested.

For various reasons the smuggling houses appear to have enjoyed considerable success and popularity. Someone who did not have to cover the cost of a licence could obviously afford to undercut the legitimate retailers. Between 1828 and 1846 the cost of a general wine and spirits licence was £112 10s pa. This prohibitively exorbitant sum almost forced the trade into the eagerly awaiting hands of the smugglers. Business was so threatened and competition so intense that a letter to the SACA in 1835 suggested that out of financial expediency, the licensees even supplied the smugglers with the alcohol that they required to trade³⁵.

These unlicensed dealers were either those who had no licence of any description, or those who were "underlicensed".

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A letter to the SACA described the area between Keerom and Burg Streets as a populous part of town and where many smuggling houses were situated. Only 4 licensed dealers operated there, which undoubtedly encouraged smuggling. SACA 18 February 1835 letter to editor.

Six years later a contributor to the ZA also complained of smuggling in the upper part of town. ZA 12 February 1841 letter to editor.

34 An article in the ZA in 1836 mentioned the case of a Buitenkant publican whose business was suffering owing to the competition of smugglers. The proximity of the barracks housing a large number of soldiers probably acted as a great incentive to smugglers. ZA 1 July 1836

35 SACA 18 February 1835 letter to editor.

This last category included all those who for example had taken out a beer or eating house licence which was considerably less than that for wine. It was common practice, for those with only a beer licence to sell wine regardless. From 1832 (Ordinance 93) the price of an alehouse licence was £10, an inn £2 10s, and an eating house a mere 5s pa.

Participation in the illegal sale of alcohol seems to have been comparatively simple. For example, 52 gallons of wine could be bought for only £2 14s from wholesalers, thus requiring a relatively small capital outlay to set up business³⁶. Even with a licence an ordinary bottle of Cape wine was sold for as little as 3d and smugglers were able to bring their prices even lower³⁷. It was this very cheapness that undoubtedly enticed the average consumer.

Neither were the premises an obstacle since these entrepreneurs ran their operations from their own houses. This was a convenient albeit risky way of supplementing a meagre wage or for some the sole source of income³⁸. Inspector King believed that smugglers were invariably poor and their premises

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1/CT 14/13 15 March 1844 Resident Magistrate to Colonial Secretary.

³⁷ 1/CT 14/13 15 March 1844.

³⁸ The Resident Magistrate was constantly presented with memorials from "poor" offenders convicted for smuggling.
e.g. 1/CT 14/13 Resident Magistrate to Colonial Secretary
6 October 1842 from an "abandoned" woman with 3 children.
6 October 1842 from a single woman. 14 November 1843 from a widow with 4 children.

filthy and that if caught had nothing to lose³⁹.

The fact that smuggling was performed on private property meant that, unlike in the licensed canteens, customers were free from the prying eyes of the police. Writing in 1836 on the subject of smuggling houses, the Attorney-General commented:

"In fact the more respectable a public house is, the less business it does with the extreme lower orders, who prefer those sinks of iniquity in which they are permitted to drink, swear,⁴⁰ gamble, fight and use the house as a bagnio (brothel)."

Another factor contributing to the popularity of the smuggling houses was that from 1832 the legitimate traders were closed on the Sabbath⁴¹. For many workers this probably constituted their only day of escape from an employer and complete day of rest. Apparently some labourers were only paid on a Saturday evening, and therefore with a lump sum in their pocket could not resist the allure of a smuggling house⁴². For those who did not strictly observe the Sabbath, and in the absence of alternatives, the smuggling houses filled an important recreational need. Naturally the authorities argued

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CO 502 9 February 1841 Report of King on Smuggling Houses. The poverty of the smugglers also contributed to the difficulties encountered over prosecution. Knowing that smugglers were not usually in a position to pay a fine, informers did not come forward, because they would not receive their share.

⁴⁰ AG 2614 25 March 1836 Attorney-General to Colonial Secretary. Report on the Desecration of the Sabbath.

⁴¹ Stipulated by Ordinance 93, 1832. Prior to this, Ordinance 30 of 1827 had allowed the canteens to open from 2pm to 9pm on Sundays. Weekday opening remained constant at 6am - 9pm.

⁴² SACA 18 February 1835 letter to editor. Ordinance 30 of 1827 had prohibited employers from paying their workers in canteens, which possibly went part-way to reducing the temptation of squandering their entire earnings on liquor.

that the smuggling houses created a demand for alcohol, but it is more reasonable to assume that the smugglers merely tapped a demand that already existed.

The problem of smuggling was compounded by the multitude of visiting sailors from vessels in Cape Town harbour who were only allowed shore leave on Sundays⁴³. These sailors, with a ready appetite for liquor and entertainment after long periods at sea, and probably also in search of female company, obviously headed straight for the smuggling houses. According to Inspector King, as the sailors came on shore, they were met by soldiers on the jetty who then guided them to a drinking venue⁴⁴.

The Resident Magistrate further attributed the causes and extent of Cape Town's drunkenness and smuggling to a combination of factors. The most significant were that Cape Town was a seaport, garrison and market town, housed a large population of labourers and mechanics, and was the principal wine market for the whole colony⁴⁵. The situation was aggravated by declining wine exports, and thus any excess produce was channelled into Cape Town. This ensured that there was not only an abundant supply, but that prices remained low. Despite their more intoxicating properties the more expensive spirits did not appear to pose such a problem, since they were beyond the reach of the average consumer. Beer, on the other hand, was more

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⁴³ CO 502 9 February 1841 Report of King.

⁴⁴ CO 502 9 February 1841.

⁴⁵ 1/CT 14/13 15 March 1844 Resident Magistrate to Colonial Secretary.

expensive but less intoxicating. In the 1830's it was suggested that to encourage consumption of the less "harmful" beer the price of wine should be increased⁴⁶. This was not met with any enthusiasm, and the cheap and readily available wine was a continuous source of consternation.

Naturally steps had to be taken to eradicate smuggling, but as Borchers pointed out, the traders in illicit alcohol were sophisticated enough to baffle the police so that cases rarely came before a magistrate⁴⁷. For a variety of reasons the police and magistrates were frustrated in their efforts to apprehend and prove the guilt of offenders. The initial problem was to locate the venues of these enterprises. The police were empowered to enter premises suspected of illegally selling alcohol but if the offenders had prior knowledge of a search they could either hastily pack up their operation, or if caught in the act argue that no money had exchanged hands⁴⁸. Another ploy to escape detection was to extinguish any lights and remain silent until the patrolling constable had passed by. Poor women and children were sometimes used as "fronts" so that the real master-mind went undetected⁴⁹. This suggests a higher degree of organisation than the authorities were usually ready to

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⁴⁶ Judges 'Poverty' p50.

⁴⁷ From 1837 to 1843 only 68 cases were heard - just under 10 every year. 1/CT 14/13 15 March 1844 Resident Magistrate to Colonial Secretary.

⁴⁸ A frequently used excuse was to argue that the alcohol had been given in exchange for work rather than cash. e.g. 1/CT 6/15 23 February 1829 case of Peter Gaburg, whose case was dismissed as a sale could not be proven.

⁴⁹ 1/CT 14/13 15 March 1844 Resident Magistrate to Colonial Secretary.

concede.

Even if a case came before a magistrate, conviction was by no means guaranteed. The stumbling block was to be able to prove that cash had actually changed hands, for which witnesses were necessary. Inspector King stated that despite the inducement of a reward, the co-operation of the public in securing convictions was virtually non-existent⁵⁰. This situation only altered if an argument occurred between smuggler and customer, in which case the police would be supplied with the necessary evidence by the aggrieved customer⁵¹. More often than not, however, the dispute was patched up before the trial, thus leaving the police without a witness⁵². To counteract this difficulty, new legislation was passed in 1846 which stated that proof of payment was no longer necessary to convict smugglers⁵³. This partly removed the obstacles, but the problem remained of getting the case to a magistrate.

It was smuggling therefore, particularly on the Sabbath, that appeared to pose a threat, not only to the agencies of the law and to those who feared the disintegration of the moral fabric of society, but also to the licensed retailers. One

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CO 502 9 February 1841 Report of King. See also above footnote 39.

⁵¹ e.g. 1/CT 6/18 14 March 1843 case of Eva Smith who was reported to the police by an angry neighbour who had been refused service.

⁵² CO 502 9 February 1841 Report of King.

⁵³ Ordinance 29 1846.

prominent wine merchant, H C Jarvis, believed that the unlicensed houses sold more wine on a Sunday alone than the licensed houses throughout the entire week⁵⁴. This was no doubt a distortion of the truth, but serves to illustrate the concern felt by the legitimate traders over the serious competition that smugglers presented.

This concern was demonstrated when in 1842 the licensed retailers rallied forces and established a "Licensed Victuallers' Protection Society"⁵⁵. The subscribers' avowed intention was to combat the problem of smuggling, which obviously threatened their legitimate business prospects. The Victuallers were not as crude, however, to admit that their real cause of anxiety was purely financial self-interest. Their argument was instead couched in persuasive moral overtones. The smuggling houses were described as "dens of infamy, where

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CCP 4/19/1 'Documents on the Workings of Ordinance 29'
5 October 1846 (Cape Town 1849).

⁵⁵ ZA 26 July 1842 letter to editor. Three years after the prohibition on Sunday trading, a licence-holder had complained to the SACA that it was hardly surprising that so many licence-holders went bankrupt when the smugglers offered such stiff competition. This contributor claimed that everything from alcohol to penguin eggs by the 100 could be obtained from smugglers. The writer promised to expose the names of 100 or more smugglers, but this proved to be an empty threat. SACA 21 January 1835 letter to editor. Another letter of complaint referred to the declining number of licences and the recent memorial that was sent to the Colonial Office by licensed victuallers which was ignored. SACA 18 February 1835 letter to editor. Another memorial was sent to the Colonial Office in 1837 by 13 publicans, but again nothing was done. CO 3992 20 December 1837 memorial to Colonial Office. Other licensees attempted other solutions, by offering rewards for evidence that would lead to the conviction of smugglers. e.g. GG 17 January 1840 Advertisement. All these attempts appear to have been equally fruitless.

vagabonds of all descriptions, strangers and natives of both sexes, and of every age, give themselves up to all sorts of debauchery"⁵⁶. Naturally, in complete contrast to these, stood their even well-run and orderly premises, but protection of their own interests was the crux of the matter, not the threat of disorder.

The very creation of this organisation raises doubts about the efficiency of the police, since rather than relying solely on the police force, the licence holders effectively seized the initiative themselves. The question of what the police should have done was undoubtedly a tricky one not least because of the practical problems already outlined. It is also feasible that smuggling was not high on the police's list of priorities. They may have preferred to concentrate their efforts on dealing with the more visible and public manifestations of disorder (e.g. assault, rowdy behaviour) rather than smuggling which was for more covert.

In many respects, the police were not, in any case dependable, and due to irregularities in their own conduct probably did much to encourage the illicit trade in alcohol. A contributor to the SACA in 1833 believed that the police were reluctant to take action against the smugglers as they did not

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ZA 26 July 1842 letter to editor.

wish to be labelled as spies⁵⁷. This seems to point to the police being regarded by the community as outsiders, and the police perhaps even being aware of this ostracism. The writer also contended that smuggling houses were left undisturbed by the police as it was realized that no profit could be made from such poor offenders. It is doubtful whether all smugglers were actually so impoverished but significant that the policemen do not appear to have regarded those who could not pay a fine as such a good "cop".

Alternatively, smugglers were able to bribe the policemen with alcohol, although drinking while on duty, in theory, meant dismissal. In 1841 "a friend of order" wrote to the ZA complaining of a certain smuggler, who was apparently never arrested because he bought the silence of the constables⁵⁸. The police were probably compelled to buy the desired alcohol from smugglers since licence-holders were prohibited from selling liquor to policemen on duty⁵⁹. In 1847 a writer again protested to the SACA on the subject of the enticement offered by smugglers to the young policeman on his dreary night watch⁶⁰. It is clear, therefore, that both police and policed

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SACA 25 September 1833 letter to editor. This fear of the police being used as Home Office spies had been one of the objections to the creation of a professional police force in England prior to 1829, and was one of the factors contributing to the donning of uniforms. The fear of spies continued to be a stumbling block to the establishment of a detective branch which was only accomplished in London in 1842. Critchley History p57.

⁵⁸ ZA 12 February 1841 letter to editor

⁵⁹ Ordinance 2 1840

⁶⁰ SACA 11 September 1847 letter to editor.

were equally susceptible to the same temptations and pleasures, and the police were obviously not meeting the requirements of "domestic missionaries"⁶¹.

Drunkenness and the behaviour that it was believed to engender (violence theft, gambling etc.) were part of a way of life that the dominant classes found abhorrent. The poorer Capetonians, however, persistently refused to recognize the error of their ways and be inculcated with the values of the dominant classes, particularly sobriety. The fining and imprisonment of offenders did not appear to significantly reduce the number of drunkards, and therefore other expedients were resorted to. If, as was the case in Cape Town, the consumers of alcohol could not be personally persuaded, of the desirability of a moderate use of liquor, then an alternative strategy was to at least regulate the liquor outlets. Rather than unsuccessfully attempting to transform a very resistant sub-culture, a more realistic strategy was to eliminate some of its most offensive characteristics.

By the 1840's the authorities appear to have been sufficiently awakened to the problem to countenance action of some description. In 1844 a Government Circular was sent to a

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See Storch 'Domestic Missionary' pp481-509 for an examination of the role of the police in the North of England, in a slightly later period.

number of Resident Magistrates throughout the colony⁶². This was followed in 1846 by the appointment of a Legislative Council Committee to investigate the question of liquor licences⁶³. After examining a number of prominent Cape Town hoteliers and brewers, who overwhelmingly agreed that the licence fee should be reduced, a number of recommendations were made^{64, 65}. Inter alia, it was proposed to introduce a uniform licence fee for all liquor outlets, that the licence fee be considerably reduced to £20, and that opening hours be lengthened⁶⁶.

In 1847, therefore, the new ordinance came into effect, with a drastically reduced wine licence at a little over 1/5 of its former size⁶⁷. This far more realistic and affordable fee, naturally had the effect of opening up the retail liquor trade and removing it from the hands of a relatively small elite. The number of liquor outlets mushroomed, which provoked considerable

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LCA Vol 17 "An Abstract of the replies of the respective Resident Magistrates to the queries set forth in the Circular of 2 February 1844 relative to issuing wine and spirit licences"

⁶³ LCA Vol 17 1 April 1846. Report of the Legislative Council on the workings of Ordinance 93 of 1832.

⁶⁴ All the hoteliers agreed that there should be no distinction for licensing purposes between hotels, ordinary boarding houses, or canteens. They claimed that their businesses were being ruined owing to the competition of boarding houses who sold wine without the necessary licence. The "common" boarding houses for sailors were particularly complained of by hoteliers and brewers alike.

⁶⁵ It is unclear what the brewers envisaged to aid the ailing beer industry, although they were obviously far from happy with the existing situation.

⁶⁶ Other suggestions included reduced fines for smuggling, but that all of the penalty from smuggling offences should go to the informer. This measure was subsequently adopted as part of the continuing efforts to ensure public co-operation with the law.

⁶⁷ Ordinance 29 1846.

opposition⁶⁷.

In 1848 a certain "Jack in the Bush" complained to the SACA that there were far too many canteens and that because the licences were so cheap, not all premises were respectable⁶⁸. What had been the exclusive preserve of a monied few was now a free for all. "Jack" went on to argue that prospective licensees were able to borrow the necessary £20 from the wholesale wine merchants, who obviously stood to gain from a greater number of outlets for their wine. The licence, therefore, acted as no impediment whatsoever, and even those with no private funding of their own were able to participate in the liquor business. Their involvement was further facilitated by the fact that licences could be bought in instalments. "Jack" believed that the increased array of canteens were competing for an unchanged volume of business and were consequently forced into competition with each other. Some even resorted to breaking the law to attract custom. "Gambling, women of ill-fame, receiving stolen goods for liquor, keeping their houses open at unlawful hours, Sundays, holidays, are the lures or bait to catch the fish".

The fundamental cause of anxiety, therefore, was that alcohol had been made more readily accessible. It was a widely held belief that the "natives" were addicted to liquor, but

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e.g. ZA 17 April 1848, 16 November 1848 editorials. In 1845 there were 75 licence-holders and by 1847 101. This constituted an increase of some 30% in only 2 years.

⁶⁸ SACA 9 February 1848 letter to editor.

occurring as this did so soon after the end of slavery, it was particularly feared that the ex-slaves who were "rising out of a state of barbarism" would not be able to resist the temptation of alcohol. Succumbing to this desire would then lead them into a life of poverty, depravity and crime⁶⁹.

One way of dealing with the problem of the quality of the licensed premises was to attempt to ensure that the licence-holders themselves were upstanding and respectable members of the community. The calibre of the licensees had always been a point of concern, but this was particularly acute after 1846.

Any measures to carefully select licence-holders were easily thwarted if the individual who paid for the licence preferred to employ a manager in his stead. As the SACA pointed out, servants or slaves could be left in charge, but as they commanded little or no respect, the premises deteriorated into an unruly state⁷⁰. The cause of ill-governed canteens was attributed to the servants rather than the master, "whom the law does not hold responsible for the consequences of drunkenness among his customers (and) will, in order to show his diligence, rather encourage excess than restrain it"⁷¹.

The magistrates, in consultation with the police and

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70 SACA 8 January 1848 editorial.
71 SACA 6 July 1833 editorial.
SACA 16 January 1839 letter to editor.

wardmasters (after 1840), were responsible for the issuing of liquor licences. If the suitability of an applicant was in doubt, the licence was refused. The discretionary power of the magistrate appears to have led to a certain degree of animosity between the authorities and the licensees. This prompted one licence-holder to write:

"I apprehend it will prove to be an incontrovertible fact that much of the morality of low-life can by no act, no act of power, be taken out of the publican's influence. It is best then to secure that influence on the side of order"⁷².

This comment illustrated at least one astute publican's realisation of his self-importance and potentially useful role in ensuring harmonious community relations. Co-operation, however, was by no means simple, and on the whole, publicans were regarded with a certain amount of distrust and distaste. A comment by the Resident Magistrate probably accurately reflected the attitude of many of the public towards canteen-keepers. He stated that licences should only be granted to respectable parties, adding, "at least as far as they can be considered as such, who choose to resort to that mode of livelihood"⁷³.

On the other hand some publicans undoubtedly deserved this disdain and showed scant respect for either the law or police. When the premises of a certain Charles Andrews in Bree Street, for example, were inspected by a wardmaster, Andrews flew into an immediate rage. He declared that he was king in his own home

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CO 3964 18 September 1833 memorial of licensed publican Jones to Colonial Secretary.

⁷³ 1/CT 14/13 15 March 1844 Resident Magistrate to Colonial Secretary.

and that both the wardmaster and the superintendent of police could "kiss my arse!"⁷⁴

Although it seems to have been grudgingly admitted that canteens were an integral and extremely prominent feature of popular culture, some of the recreations that they housed were the cause of serious misgivings. Drinking haunts were regarded with suspicion and invariably associated, in a large number of cases correctly, with gambling, prostitution and cockfighting. Whereas canteens would be tolerated, albeit on sufferance, a similar forbearance was not extended to other worldly pleasures. The consensus among the authorities and concerned members of the public was that they should, quite emphatically be eradicated.

Surprisingly little information has been discovered regarding prostitution. One might expect to find a fairly extensive and well-established network of prostitution since Cape Town served both as a garrison town and harbour, and therefore contained a large number of unattached males. Few cases, however, are to be found in the Court Record

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1/CT 6/18 4 May 1848 case of Charles Andrews.

Books⁷⁵ . From 1840 to 1843, the proportion of prostitutes as a total of yearly offenders fluctuated between only 2% and 3% which in real terms meant a yearly average of 30 convictions. These figures peaked in 1841 with 55 convictions for prostitution but this concealed a number of regular offenders⁷⁶.

After 1843 figures relating to the incidence of prostitution are conspicuously absent, although it is highly improbable that the problem had disappeared. It is more likely that the efforts of the "new police" from 1840 drove the operations underground and that the prostitutes themselves became more adept at thwarting the police. This explanation however, is not wholly convincing. Many of the policemen were unmarried and according to their Superintendent often suffered from venereal diseases⁷⁷. It is possible that at least some policemen provided custom for the prostitutes, and would not therefore have endeavoured to make arrests. This issue highlights the

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This was also the case in Victorian London where neither prostitution itself, nor soliciting were offences. It had to be proved that a prostitute had been an annoyance and as magistrates were reluctant to sentence on the evidence of the police alone, there were few successful prosecutions. There were, therefore, continual demands for amendments to the existing legislation. In any case prostitution was a problematic issue, as some of the clientele were probably gentlemen. Storch R D "Police Control of Street Prostitution in Victorian London" in Bayley D H (ed) Police and Society (London 1977) pp52-54.

76 The example of Catherine Wood from Scotland illustrates this point. In the space of 39 months she was convicted no less than 51 times. 11 other white, Khoi and black women averaged between them 30 convictions each in the same period. CO 520 19 September 1843 Police Report by Inspector King.

77 See above Chapter I.

difficulty of the police constables having quite distinct interests from their superiors.

Very few cases of brothels have been located, although they certainly existed⁷⁸. The seeming shortage of organised facilities meant that some prostitutes provided their services quite openly in the streets. The Court Record Books reveal that there were instances of "carnal connection" in the most public places such as the Parade or Hottentot Square, at all hours of the night and day. It was also widely suspected that prostitutes solicited in canteens, and thus the supervision of drinking places became even more crucial⁷⁹.

The capacity of the sub-culture to withstand interference, and the lengths which it would go to do so, became clear during an episode in Zieke Street in 1843. After receiving a complaint from a wardmaster, the police were dispatched to the neighbourhood to remove a number of prostitutes. Although there was no mention of violence being utilized, a group of soldiers

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In 1833, for example, Rosie, a "free woman of colour" was sentenced for opening her house to customers "for the purpose of whoring and misbehaving themselves". 1/CT 8/9 28 June 1833 case of Rosie. In the eighteenth century, the colony's most notorious brothel was the company slave lodge. Ross Cape of Torments p21.

79 The only prosecution that has been discovered is that of publican Thomas Smith, who based a brothel in his canteen, where the prostitutes paid him 2 rix dollars per night for the hire of a bed.
1/CT 6/17 20 July 1832 case of Thomas Smith.
Attorney-General Oliphant, also mentioned a canteen-keeper who used one of his rooms as a brothel. Six to eight "Hottentot" women were kept in a back room, principally for the pleasure of visiting soldiers. AG 2614 25 March 1836 Attorney-General to Colonial Secretary.

successfully prevented the police from carrying out their orders⁸⁰. The police were obliged to withdraw illustrating the precariousness of their position when confronted with opposition and the ability of the public to resist encroachments on their recreation. Prostitution would clearly remain, although perhaps at a less conspicuous level. This in itself may have satisfied many critics.

Another cause of concern was the recreational habit of gambling. The Police Record Books reveal that over a ten year period (1840-1850) gambling accounted for an average 1,25% of the total cases⁸¹ (see Table 3). This very small figure belies the concern that this offence generated, although responses could be ambiguous as gambling had long been a feature of upper-class recreation. What was acceptable among a wealthy elite, however, proved not to be so for the poorer masses.

Gambling per se does not appear to have been an offence unless it occurred in public such as in the streets, or canteens. This, of course, meant that to all intents and purposes only the poor were affected and the wealthy were free to gamble in their private rendezvous. Again it appears to have been a question of removing such undesirable behaviour from public view, rather than total prevention which was anyway

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1/CT 6/18 10 November 1836 Case of Erfurt.

⁸¹ Part of the explanation for this low figure was the difficulty of successful prosecutions. It had to be proved that the gamblers were playing for cash, and in the absence of witnesses this was naturally difficult.

unrealistic.

Anxiety over gambling was particularly acute in the early 1830's. With slave emancipation imminent, it was felt that without the guiding hand of their masters the slave population would be free to indulge in all sorts of excesses. The 1830's were also characterized by a paranoic fear of vagrancy, theft and drunkenness. As far as the majority of the dominant classes were concerned this trio formed the inseparable ingredients of a degraded sub-culture that threatened the status quo. Gambling was also a component of this trinity of totally unacceptable behaviour.

The greatest problem posed by gambling was expressed by "X,Y,Z", contributors to the SACA in 1833, who drew a direct link between gambling debts, impoverishment and crime. They argued that gamblers who squandered their money were driven to desperation and then committed all kinds of crime, among them theft and murder. Widespread gambling, thus allegedly explained the late increase in robberies⁸². This attitude was shared by a number of other writers to the local press⁸³.

Gambling and sporting games tended to be inevitably associated. In Cape Town this was particularly true of skittles and cockfighting. The venue of these activities was usually the

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⁸² SACA 3 July 1833 letter to editor.

⁸³ e.g. ZA 15 August 1834 letter to editor. ZA 17 October 1834 letter to editor complaining that gambling was a vice to which Cape Town's youth were particularly addicted.

canteens, thus lending credibility to the argument of those who attacked the drinking haunts as "dens of iniquity and vice".

In 1833 the widespread practice of playing skittles for money was complained of⁸⁴. In retaliation to this attack on popular recreation, the following edition of the SACA carried a letter, vehemently defending the playing of skittles, emphasizing that the game did not necessarily entail gambling. It was argued that workers were entitled to relaxation and leisure pursuits and that this was one of "the very few exercises permitted to the melancholy brooding, over-legislated, over-taxed working population of this impoverished capital"⁸⁵. This sympathy evinced towards the workers and the demonstration of a realistic awareness of the need for leisure, was, however, all too rare.

Opposition to cockfighting, on the other hand, was couched in slightly different terminology, adopting a greater moralizing tone. As well as widely believed to encourage gambling, it was condemned by one "enemy to cockfighting" as "low, mean, contemptible and barbarous"⁸⁶. The concern over cockfighting also demonstrated an interest among the dominant classes in animal welfare, which was gathering momentum. In England there was passionate opposition to bloodsports, which by the 1840's

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⁸⁵ SACA 3 July 1833 letter to the editor.
⁸⁶ SACA 10 July 1833 letter to editor.
ZA 15 August 1834 letter to editor.

had mostly been eliminated⁸⁷. Similar sentiments were also evident in contemporary Cape Town. A "lover of consistency" condemned both cockfighting and horse-racing, not only for the rumoured behaviour that they encouraged, but because they were cruel⁸⁸.

Generally however, it was not the races per se that came under attack but "all the accompanying disgusting scenes and wicked, wanton depredations committed on persons and property night and day, during their continuance"⁸⁹. The annual races at Green point were often the cause of considerable anxiety, and the newspapers in the weeks preceding the races carried a variety of letters from worried members of the public⁹⁰. Since racing had long enjoyed the patronage of the wealthy, responses were again varied. In 1848 in a speech to commemorate the races, Governor Harry Smith defended the event on the grounds that, in his experience, the races were well ordered. It had given him "sincere pleasure to observe the poor as well as the rich taking their holiday without intemperance". He was fully aware that gambling had occurred, but only involving "trifling amounts"⁹¹.

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Malcolmson R W Popular Recreations in English Society
1700-1850 (Cambridge 1973) p119.
88 SACA 11 May 1836 letter to editor.
89 SACA 24 April 1839 letter to editor.
90 Even the Municipality complained in 1842 that "... the most disgraceful scenes of debauchery and drunkenness were exhibited on the race course on the last Sabbath day."
3/CT 3/1/1/1 27 April 1842 Municipality to Superintendent of Police.
91 ZA 27 April 1848.

Despite this enthusiasm and unequivocal seal of approval from such a prominent member of the establishment, the races continued to be rowdy occasions and the strict supervision of the police was always deemed necessary. The mixed patronage, however, ensured that the races successfully resisted pressure for their curtailment.

Together with the efforts of the dominant classes to deal with intemperance, prostitution and gambling, a further attack was made on the non-observance of the Lord's Day. In this respect the Capetonian reformers again echoed the concerns of their English counterparts, who thoroughly disapproved of worldly pleasures on the Sabbath. These sentiments were fuelled by a resurgence of evangelicalism in England from the 1820's⁹². These so called Sabbatarians, most of whom were evangelical, had dual aims. Basically they were to prevent the consumption of alcohol on the Sabbath and to ensure that no work was carried out, so that the populace was free to go to church. Their strategy was two-fold; pressurizing for amended legislation and attempting to persuade the "lower orders" that the fate of their souls was at stake⁹³. In 1832 the

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⁹² Malcolmson Popular Recreations pp104-105.

⁹³ By the 1830's the only comprehensive statute in England was one dating back to 1667 which prohibited trade and labour on the Sabbath. In practice the law was a dead letter particularly in London, and Sunday was a day of street markets, open public houses and other worldly pleasures. The evangelical influence was at its height by the 1830's, but due to opposition from both the upper and lower classes, it only had limited successes, which included the partial closure of pubs on Sundays. Miller W R "Never on Sunday: Moralistic Reformers and the Police in London and New York City 1830-1870" in Bayley (ed) Police and Society pp128-130

British Select Committee appointed to investigate drunkenness reported that the violation of the Sabbath, was "highly injurious to the best interests of the people and which is calculated to bring down upon the country the Divine Displeasure"⁹⁴. This invoking of the Lord and divine wrath was an extremely useful trump card.

In Cape Town the problem was heightened because of either the lack of religious conformity or simply the absence of any religious faith whatsoever. The 1836 memorandum of Attorney-General Oliphant outlined three distinct categories of Sabbath breakers. The largest groups were the Muslims who regarded the Sabbath as a holiday and therefore either allegedly indulged in their favourite pastimes of cockfighting and drinking beer or "making Sunday excursions and picknick parties to the country." Attitudes towards the Muslims were often characterized by an element of fear tinged with hostility since Cape Town contained an expanding number of Muslims⁹⁵. The ability of Islam to rival Christianity was widely feared, especially since the emancipated slaves readily converted to Islam⁹⁶.

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"Report from the Select Committee appointed to inquire into the Extent, Causes and Consequences of the prevailing vice of Intoxication among the Labouring classes of the United Kingdom". British Parliamentary Papers 5 August 1834.

⁹⁵ In 1822 the figure was 3000 and by 1841 6492. Shell 'Rites and Rebellion' p7. In some areas of Cape Town the Muslims formed a sizeable proportion of the population. In Districts 4 and 7, for example, they constituted 46% of the total number of residents. 3/CT 1/1/5/8 7 November 1842

⁹⁶ Statistical Return of R Waters to Municipality
Shell 'Rites and Rebellion' p2.

The second group were the free blacks who were described as "pagans". Concern over the moral plight of the blacks was particularly pertinent in the 1830's, as it was felt that without the guidance of their Christian masters, these persons would not be fit and proper members of society. The need to mould the free blacks into respectable church-goers was, therefore, regarded as crucial.

The third class of offenders and, according to Oliphant, the "most degraded", were the poor Irish, Scottish and English immigrants who resided in "Irish Town" and the Barrack Street area. These people spent their Sundays consuming alcohol, or as Oliphant believed, in "orgies"⁹⁷.

These three elements of the community persisted in maintaining a distinct cultural identity and thus the attempts of the dominant classes to convert them to Christianity and a more "respectable" lifestyle proved futile. As a last resort, it was proposed that an ordinance should be introduced to remedy the situation which occasioned a mixed response. The Attorney-General wrote:

"The voice of the Government of this colony speaks sufficiently in its ordinances but no man heeds them, nor will heed them, but on the contrary will always evade them unless he can be made to venerate the Sabbath day,"⁹⁸ through fear and love of him who sanctified it."

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AG 2614 25 March 1836 Attorney-General to Colonial Secretary.

⁹⁸ AG 2614 25 March 1836 Attorney-General to Colonial Secretary.

He astutely realized that the populace could not be legally coerced into respecting the Sabbath. Some memorialists also questioned the wisdom of such a measure as it was argued that the enforced observance of the Lord's Day by imprisonment and flogging would only serve to bring religion into "contempt and abhorrence amongst the coloured people of this colony"⁹⁹. Resident Magistrate Borchers, argued even more forcefully, "may it not create aversion or be a handle (sic) to the Mohammedan and tend to increase the number of Proselytes of that sect"¹⁰⁰.

Despite these misgivings an ordinance was passed in 1837, which prohibited work on Sundays¹⁰¹. The most typical reaction was one of firm approval, but there were those who were alarmed by the potentially deleterious effects on shipping and trade, in particular the sale of meat, fish and bread¹⁰². The dominant classes themselves could not present a united front as they had over other issues, because the merchants and traders were alienated by the reformers. When it came to the crunch financial considerations proved to be more important than either morals or religion. Due to pressure from businessmen who

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LCA 8 September 1837 memorial from 402 Cape Town inhabitants.

¹⁰⁰1/CT 14/13 14 March 1836 Resident Magistrate to Colonial Secretary.

¹⁰¹Ordinance 4 1837.

¹⁰²LCA Vol 8 18 August 1837 memorial regarding the sale of milk. August 1837 memorial from 445 bakers, breadsellers and inhabitants. 9 January 1838 memorial from 9 butchers. January 1838 memorial from 49 merchants. January 1838 memorial from 266 householders and inhabitants of Cape Town.

featured among their ranks prominent individuals such as Chiappini, Dickson, Ross and Jarvis, this ordinance was subsequently repealed. The Government was obviously more prepared to serve the interests of business rather than the reformers' cause and the status quo of 1828 was effectively restored¹⁰³.

Thereafter concern about the Sabbath abated and was only reawakened with the proposal in 1846 to open canteens on Sundays. This suggestion provoked a storm of protest and demonstrated that the sabbatarian lobby was still sufficiently strong to thwart this measure¹⁰⁴.

Apart from these rather ad hoc tinkerings with the legal code, the reformers were also aware of the need to shape the morals of the lower orders through other channels. In this respect the roles of religion and education were of fundamental importance, and, in theory, at least, should have been a relatively simple means of inculcating the values of the dominant classes.

Like the English reformers, the Capetonians demonstrated an ability to organise themselves into reforming societies. The first of these to appear in Cape Town was the "Cape of Good Hope

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Ordinance 1 1838.

¹⁰⁴LCA vol 18 September 1846 item 16 to 26 and 28 to 29
Memorials protesting at the idea were sent from a number of church congregations such as St Georges', the Dutch Reformed Church, the Barrack Street chapel etc. A memorial was also sent by 449 Capetonians.

Temperance Society" set up in 1832 and modelled on similar societies in England and America¹⁰⁵. Despite the backing of influential, albeit controversial, individuals such as Dr Philip, support was lukewarm and by 1835 its career was all but over¹⁰⁶. In 1846 the CTM carried a report on the meetings of the "Cape Town Total Abstinence Society" lamenting the fact that of late they were only thinly attended¹⁰⁷. Societies like these could evidently make little headway in a community where recreation largely revolved around alcohol.

Other organisations were set up focusing on education. These included the 1842 "Cape Town Mental Improvement Society"¹⁰⁸, and the 1845 "Cape Town Institute for the Diffusion of Useful Knowledge"¹⁰⁹. They aimed, however, at a wealthy and educated audience emphasizing subjects such as chemistry and philosophy, which were beyond the scope of the average poorly educated labourer. For this reason, their impact was undoubtedly extremely limited, especially as their activities consisted purely of public lectures and debates, rather than any practical steps to "improve" the masses¹¹⁰.

Some, however, did recognize the need to educate the workers, among them the Resident Magistrate, who wished for more

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CO 385 12 January 1832 memorial to Colonial Secretary.

106Judges 'Poverty' p52.

107CTM 10 January 1846.

108CTM 8 February 1845.

109CTM 29 May 1847.

110For a study of "rational recreation" in Victorian England see Bailey Leisure and Class pp35-55.

churches, chapels and schools to encourage "proper religious and moral feelings"¹¹¹. The editors of the SACA wrote optimistically in 1843 that under the influence of education "conscience is awakened and the people become more orderly, more honest, more industrious, as well as more intelligent". Reaffirming the dominant classes faith in education, they stated that their enthusiasm was shared by the judges, magistrates and police "who came nearer to the current of petty offences emanating from ignorance and the feebleness of sensual temperaments"¹¹².

Church societies were also concerned by the "lamentable degradation of many of the lower orders of our countrymen; the English mechanics and labourers of this town". Their solution was to petition the Municipality for land in Caledon Square, on which to build a church. They declared:

"...that even the best Police and Fiscal regulations must fail in restraining intemperance and crime amongst a population thus left without those higher restraints and more enobling principles, which ever follow the introduction of a faithful and effectual public ministry, with the free schools and other subsidiary agencies for good..."¹¹³

Some years later Murray summed up the attitude of church societies to worldly pleasures. Describing the transformation of the theatre in Hottentot Square into a Sunday school, he

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1/CT 14/13 15 March 1844 Resident Magistrate to Colonial Secretary.

¹¹²SACA 8 November 1842 editorial. Attorney-general, Porter, also saw the need to educate the poor, so that they became a respectable, obedient and orderly class. Porter W Porter Speeches 1839-1845 (Cape Town 1886) p24.

¹¹³3/CT 1/1/5/3 9 September 1841 memorial to municipality from the Colonial Church Society.

wrote that it was carried out "by some Dutch goody-goodys, under the belief that going to the theatre was half-way of not more, to the bottomless pit"¹¹⁴.

Education, however, was expensive, especially as a schooling infrastructure did not yet exist at the Cape. Facilities that did exist were mainly in the hands of missionaries. By 1842 the SACA was able to claim that substantial progress had been made in the provision of schools and teachers. They stated that teaching was rapidly becoming one of the most respected professions in the colony. The case was perhaps overstated when the estimate of those attending either public or private schools was put at 4000¹¹⁵. More realistically in 1848 the CTM pointed to the existence of some 13 schools with attendance at just over 2000. The government-aided mission schools catered for the poor and "coloureds", who made up 3/4 of the pupils¹¹⁶. To put the matter into perspective, it should be noted that government expenditure on education was only fairly marginal. For example, the annual salary of the Governor was £5000, which education could not even match at only a little over £4000¹¹⁷.

The consumption of liquor in nineteenth-century Cape Town, either through legal or illegal channels, was clearly an

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Murray R W South African Reminiscences (Cape Town 1894)

¹¹⁵p204.

¹¹⁶SACA 26 January 1842.

¹¹⁷CTM 3 June 1848.

Cape Blue Book 1851.

indomitable and integrated feature of popular culture. The perceived problems of intemperance and liquor smuggling, and to a lesser extent prostitution and gambling, were extremely pervasive. Although the problems would have been that much more serious in the absence of a police force, in effect the police could do little to alleviate the situation, should, of course, they even have wanted to. Liquor, recreation and implicitly work were inseparable and realistically the legal code could not begin to change such long-standing and widely-enjoyed social habits. The complexity of Cape Town's social relations presented the authorities and the worried dominant classes with quite unique difficulties. The ability of the sub-culture to assert itself and resist domination was continually demonstrated, which meant that the desired social control could be extremely evasive. This forced the dominant classes to constantly rethink their strategy and adopt different tactics, but never, of course, to concede defeat.

CONCLUSION

The major themes of this thesis, the role and professionalism of the police, perceptions of crime and criminals, the process of stereotyping and the expectations of the dominant classes regarding their vision of how society should be structured are also evident in the manner in which the "criminal" was treated by the penal process. Contemporary attitudes on the subjects of the role of the law and law enforcement were also echoed in comments on the role of punishment.

The police and the penal process, in particular the prisons, were perceived by the dominant classes as the mutually enforcing components of a process to mould errant members of the under classes, who seemed to pose a threat and who did not conform to their expectations. Thus vagrants, thieves, drunkards and prostitutes were found unacceptable, principally because they either did not work, or only worked sporadically and unsatisfactorily. When the law failed to deter such behaviour and social control mechanisms proved equally fruitless an alternative strategy was to punish, but in such a way that the malefactor was rehabilitated and inculcated with the ethics of the dominant classes. Thus the under classes were to be moulded to become hard working, sober, punctual and respectable.

The main purpose of punishment, from the perspective of the dominant classes, was to instil the work ethic. As it was a widely held contention that the "natives" were naturally predisposed to indolence, and would not work unless coerced, this was of key importance. This issue had always been a concern of the dominant classes, but was of greater significance in the post-emancipation period. With the failure of the 1834 Vagrancy Ordinance, which would have had the effect of forcing individuals onto the labour market, and after the ending of slavery in 1838, when some ex-slaves withdrew their labour, the dominant classes were acutely aware of the need to guarantee a stable and reliable work force. As the economy of Cape Town was diversifying, a malleable labour supply was also critical. The Masters and Servants Ordinance partly remedied this problem, but there was still the difficulty of maintaining control outside the work place. As the desired social control was so evasive, punishment of the wayward and "criminal" under classes was a necessity, especially at this time of uncertainty engendered by incredible social change.

Thus prison and prison discipline, more than any other aspect of the penal code, was regarded by the dominant classes as playing a pivotal role in further reinforcing their interests and mores. It was emphasized that the "criminal" was reclaimable, especially through the media of education, religion

and hard work¹. A contributor to the SACA in 1836 eloquently wrote:

"The criminal should be made to feel that he has erred, not indeed by bodily infliction, but by proper work and suitable privations. It is mercy to train the idle to habits of industry. It is humanity to improve his mind. It is kindness to break him of evil-habits and to beg him to see the loveliness of virtue, the beauty of religion and morality; and it is the highest species of patriotism to suppress vice and increase the amount of industry, obedience to the laws and attention to all the duties of civilized life."²

This comment illustrates not only the firm belief of the dominant classes in the efficacy of hard work as a reforming influence, but also the question of negative stereotyping of particular groupings, especially at moments of social tension. This writer clearly perceived criminals as lazy and depraved, over whom it was necessary to exert control and discipline. Contemporary comments regarding vagrants, in particular, revealed similar concerns.

Hard work in either the prison or convict stations, however, appears to have been a misnomer. As with other areas of the law and its enforcement, there was a vast discrepancy between the hopes of the dominant classes and the reality of the situation.

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Both the nature and role of punishment were undergoing fundamental transformations in this period. The transition was from barbarous punishments, torture and the use of the death penalty, which aimed merely to inspire dread in the spectator and to extract revenge, to an emphasis on the rehabilitation of the "criminal". For a further discussion of this theme see particularly Foucault M Discipline and Punish: the Birth of the Prison (London 1977).
For an examination of the role of the prisons in nineteenth-century England see Ignatieff M A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850 (New York 1978).

² SACA 10 December 1836 letter to editor.

As laziness was regarded as both an affront to the morality of the dominant classes and as the source of crime, this was clearly unacceptable. Referring to the situation prior to 1844 when a measure of reform was instituted, a Reverend Adamson wrote:

"Men in chains used then to be seen idling in the streets, or making purchases in the retail shops, who spent the Lord's Day in washing³ their clothes or dancing to the sound of a rude drum."

This concern was echoed by a ZA editorial of 1830, describing the phenomenon of convicted slaves wandering freely throughout Cape Town without an overseer. The convicts were allegedly only distinguishable as such, by the clanking of their chains and not because of any obvious curtailments to their liberty⁴.

In some instances, however, the penalty of hard labour was clearly enforced, and again served the interests of the dominant classes. Convict labour was utilized to effect street repairs, to build mountain passes, and in part to construct the breakwater in Cape Town harbour⁵. Thus the self-interest of the commercial groupings was directly benefited by the opening up of Cape Town's hinterland and improved communications.

One of the major causes for the chasm between the

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BPP Vol 22 27 July 1849 Montagu to Smith enclosure
from Adamson.

4 ZA 31 December 1831 editorial.

5 Van Zyl Smit D 'Public Policy and the Punishment of Crime
in a Divided Society: A Historical Perspective on the South
African Penal system' in Crime and Social Justice 21-22
1984 p54.

expectations of the dominant classes and the reality of the situation in prison was the calibre of the prison staff. The criticisms levelled at the police department were equally applicable to the policemen who staffed the prisons. These prison warders were corrupt, regularly drunk, inefficient, grossly unprofessional, and often guilty of mal-treating the prison inmates⁶. Whilst the policemen patrolling the streets were totally unsuitable to qualify as "domestic missionaries", the prison staff were similarly ill-equipped to exert a reforming influence and rehabilitate any criminal

The unsatisfactory state of the prisons led to much hostile comment on the part of the dominant classes, de Lorentz included⁷, and again led to negative stereotyping. A common accusation was that a spell in prison (particularly for the Khoi and blacks) did not constitute any kind of hardship. The notion that their lifestyles consisted of voluntary unemployment, the consumption of vast quantities of liquor and squalid living

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A few examples suffice to illustrate this point:
1/CT 8/3 11 November 1833 Case no 11 - The Rondebosch gaoler allowed Regina into the gaol for the night for the "purpose of prostitution". In 1827 the Governor demanded to know how a woman, awaiting the death penalty for the last three years, had been able to give birth to 2 children in the town prison. GH 23/8 26 July 1827 Bourke to Bathurst.
1/CT 8/7 29 April 1828 Case no 64 - The overseer at the Amsterdam Battery was found guilty of being drunk, absent from duty, and allowing female "Hottentots" to be with the prisoners. Examples of mal-treatment of prisoners include 1/CT 8/7 Case 451, 1/CT 8/1 26 February 1830 Case of Woodman.

7 De Lorentz maintained that a spell in prison actually improved the living conditions of most offenders, as they were provided with food and medical treatment.
CO 512 11 January 1842 de Lorentz to Colonial Secretary.

conditions, fuelled these perceptions. Plaskett, the Colonial Secretary, opined to the Superintendent of Police in 1826, "To a convicted slave or Hottentot who is worked less and perhaps clothed and fed better than with his master, the sentence of the law is a premium, not a punishment"⁸. It was even alleged in 1836 that some jailbirds deliberately broke the law with the express intention of returning to gaol⁹.

Only one commentator found it distasteful that slaves supposedly preferred imprisonment to working for their masters:

"If they are more comfortable now than they were before, more shame to their masters and let me remark here, that if these masters were compelled to feed them better, we would not find so many instances of theft merely to satisfy hunger."¹⁰

Like the law itself, the penal process discriminated against the poor. The nature of the law, designed to bolster the control exercised by the dominant classes and to reflect their mores, meant that the poor under classes were the most likely social grouping to break the law and come into conflict with the police. Once found guilty, as they invariably were, the poor were given further discriminatory treatment in terms of the punishment they could expect. Almost all sentences carried the option of either a fine (usually 5s to £1) or imprisonment. In real terms, in the vast majority of instances, a fine was not a viable alternative to a spell in prison. The earning potential

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CO 4891 8 November 1826 Plaskett to Superintendent of Police. This view was shared by the ZA 31 December 1830 editorial, and CTM 12 March 1842 extract from Frontier Times.
⁹ SACA 10 December 1836 letter to editor.
¹⁰ ZA 30 July 1830.

of the under classes meant that they could ill-afford such a penalty, and were thus doubly penalized by both a period in prison and the loss of wages occasioned by an enforced absence from work. In the rare event of a wealthier Capetonian infringing the law, the person was far more likely to be able to afford a fine.

Prior to 1838 and the final demise of slavery, differential punishing was even more overt and even prescribed by the law. One of the most widely utilized penalties was whipping - to a maximum of 39 lashes. As Moodie, a British settler, commented, probably accurately reflecting the attitude of the dominant classes, "a man can only be punished in his person or in his property"¹¹. It was therefore felt that corporal punishment was a particularly appropriate punishment for slaves, since they usually had no property.

An advantage to the whipping of slaves rather than their incarceration, was that the slave-master did not suffer the loss of the slave's labour for any length of time¹². In the 1820's the Commissioners of Inquiry alleged that slave-owners deliberately withheld information that would lead to conviction, if they believed that the slave would be imprisoned¹³. The hostility evinced by slave owners to the idea of imprisonment is illustrated in the confrontation involving J H Lezar, a wine

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¹¹ Moodie Ten Years pp178-180.

¹² Moodie Ten Years pp178-180.

¹³ Theal Records Vol 33 p35.

merchant, who attacked a policeman for attempting to take one of his slave "boys" to prison¹⁴.

After a period of amelioration of slave punishments in the 1820's and 1830's, which it has been suggested was prompted by a need to promote reproduction of a dwindling supply of slaves rather than humanitarian concern¹⁵, whipping declined as part of the penal process. With the ending of slavery in 1838, corporal punishment was very rarely utilized, usually only for minors, involving "cuts on the posterior with a rattan"¹⁶.

In conjunction with this 'amelioration' restrictions were placed on the right of slave owners to inflict "domestic correction" on their slaves. From 1838 this was completely curtailed and henceforth the exclusive right to punish lay in the hands of the state. Thus state power, in this critical period of social transformation was considerably extended in the realm of punishment and with the establishment of a salaried and full-time police force.

From this analysis of crime in Cape Town in the 1830's and 1840's it is clear that urban growth, a changing economy and substantial social upheaval were perceived by the dominant classes as threatening their pre-eminence and security, both in

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¹⁴ 1/CT 8/1 November 1831 Case of Lezar.

¹⁵ Rayner M 'Slaves, Slave Owners, and the British State: The Cape Colony 1806-1834' in University of London,

¹⁶ Institute of Commonwealth Studies 12(28) 1980-1981 pp17-20
Term employed in the Court Record Books.

terms of their persons and property. The dominant classes, therefore continually attempted to reassert their control through the law, the police and social control mechanisms. That these strategies were often unsuccessful only strengthened the fears of the dominant classes and gave impetus to the process of stereotyping and the formulation of misconceptions regarding slaves, "Hottentots", "Malays", the Irish, soldiers and sailors. In this critical period of social change and when inter-class relations were characterized by so much fear, suspicion and uncertainty, it was almost a foregone conclusion that the poor under classes would constantly break the law, since their very lifestyles ran quite contrary to the mores of the dominant classes. As the under classes proved very adept at avoiding control and the imposition of discipline, the dominant classes were forced to demand even greater power from the legal code. That this power was not always forthcoming, together with the problems posed by incompetent and unprofessional policemen, who were supposed to enforce the wishes of the dominant classes, meant that the ascendancy of the dominant classes was temporarily frustrated, but was never totally checked.

APPENDIX I

These are two case studies of white offenders, whose names appeared with extreme frequency in the Court Record Books.

Abigail Diamond (originally from Ireland, indentured servant at the Cape).

1/CT 8/8 Court Record Book.

19 November 1830 - public prostitution in Caledon Square.
Penalty - 1 month in the House of Correction.

11 June 1831 - desertion from her master to whom she was indentured.
Penalty - 1 month in the House of Correction.

21 October 1831 - theft of various items of clothing from her master.
Penalty - 1 month in the House of Correction.

5 December 1831 - desertion from her master to whom she was indentured.
Penalty - 1 month in the House of Correction.

8 December 1831 - indecent exposure in Barrack Street.
Penalty - 1 month in the House of Correction.

24 January 1832 - public prostitution in the Buitenkant.
Penalty - 1 month in the House of Correction.

1/CT 8/2 Court Record Book.

11 October 1832 - drunkenness.
Penalty - 7 days in the House of Correction.

1/CT 8/9 Court Record Book.

30 March 1832 - indecent exposure in the Buitenkant.
Penalty - 1 month in the House of Correction.

5 December 1832 - "carnal connection" with a slave, Lodewyk, on the Grand Parade.
Penalty - 1 month in the House of Correction.

21 January 1833 - vagrancy.
Penalty - 1 month in the House of Correction.

4 July 1833 - drunkenness.
Penalty - fine of £1.

9 October 1833 - disturbance of the peace.
Penalty - 1 month in the House of Correction.

Thomas Smith (Publican)

1/CT 8/9 Court Record Book.

14 June 1832 - assaulting a "free person of colour".
Penalty - fine of £3.

1 July 1832 - assaulting a white woman.
Penalty - 14 days imprisonment with hard labour.

19 July 1832 - keeping an ill-governed and disorderly
house for the purpose of "whoring".
Penalty - 14 days imprisonment with hard labour.

9 April 1833 - assaulting a woman (possibly who had given
evidence in court against him - unclear).
Penalty - fine £2.

18 October 1833 - selling liquor without a licence.
Penalty - fine of £50 which was not paid and
therefore 2 months imprisonment.

21 October 1833 - selling liquor without a licence.
Penalty - 3 months imprisonment with hard labour.

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343	Judge of Police	1828
368	Superintendent of Police	1829
372	Judge of Police	1829
380	Judge and Superintendent of Police	1830
385	Sundry Committees	1830-1832
397	Judge and Superintendent of Police	1831
409	Resident Magistrate, Cape Town, and Superintendent of Police	1832
419	Resident Magistrate, Cape Town, and Superintendent of Police	1833
431	Judge and Superintendent of Police	1834
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